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ABSTRACT

The Council on Children, Media, and Merchandising, in a letter to the Federal Communication Commission (FCC), issued a formal complaint against the Columbia Broadcasting System (CBS). The Council charges that CBS has failed to meet its public interest obligations, as well as its obligations under the fairness doctrine, with respect to advertising aimed at children. The Council says that it first raised its concerns with the network, attempting to meet the FCC's requirement of good faith attempts to resolve disputes between citizens and broadcasters outside its legal processes. The Council maintains that CBS chose to deny its responsibilities to children rather than accept the mandate of the Communications Act. As a result, the Council has been forced to come to the FCC to seek enforcement of this obligation. The Council urges the FCC to reaffirm broadcasters' obligations to children by requiring CBS to present information to children that would educate them about television advertising. The Council also urges the FCC to investigate CBS's failure to inform adult viewers of the children's advertising issue to determine whether it has violated the first, as well as the second leg of its fairness doctrine obligations. (WCM)

ED 094770

Letter of Complaint to the FCC Against the
Columbia Broadcasting System

Council on Children
Media and Merchandising
Suite 535
1346 Connecticut Avenue, N.W.
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July 24, 1974

U.S. DEPARTMENT OF HEALTH,
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IR 000 971

July 24, 1974

Richard E. Wiley, Chairman
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

Dear Chairman Wiley:

This letter is a formal complaint against the Columbia Broadcasting System (CBS) for failure to meet its basic public interest obligations, as well as its obligations under the fairness doctrine, with respect to advertising aimed at children.

In a letter dated March 21, 1974, the Council on Children, Media and Merchandising (Council) charged CBS with failing to meet its fundamental obligation to educate its young viewers about the nature of television commercials and their advertising techniques. This complaint was based upon the basic public interest standard of the Communications Act, and not upon the fairness doctrine per se.

Additionally, we charged CBS with violating the fairness doctrine. The fairness doctrine complaint was two-fold in nature. First, CBS had failed to cover the controversial issue

of children's advertising explicitly in its news and public affairs programming directed to adults. Second, it had implicitly presented viewpoints on one side of the children's advertising issue in the ads aired during CBS's programs aimed at children, but had failed to present the other side of that issue to children in its overall programming.

The Council's March 21 letter is attached hereto (Exhibit A) and formally incorporated into this complaint. We will not attempt to repeat the facts and arguments contained therein in detail, except as necessary to put the Council's arguments in response to CBS in context.

CBS responded to the Council's letter on May 24, 1974. (Exhibit B). This response does not meet the basic contentions of the Council's March 21 letter. The Council therefore urges the Commission to require CBS to meet its public interest and fairness doctrine obligations to the children and parents of its audience by curing these current failings.

The Commission's recently adopted Fairness Report, released July 12, 1974, affirmatively supports some of the Council's arguments and does not undermine others. The Commission's reformulation of certain fairness doctrine policies has not relieved broadcasters of unique public interest responsibilities --

addressed to a unique audience and concerning the issue of advertising itself, rather than the products advertised. These points will be amplified below.

A. CBS HAS NOT MET ITS PUBLIC INTEREST
RESPONSIBILITY TO CHILDREN IN THE AREA
OF TELEVISION ADVERTISING

1. Children's Advertising Involves
Public Interest Responsibilities

The Council couched the main portion of its complaint to CBS in terms of the network's fundamental public interest obligations under the Communications Act, rather than the specific Section 315 fairness requirements which comprise only a portion of these obligations. (Exh. A, pp. 13-24).

The Council believes that a broadcaster's obligation to children transcends any particular administrative doctrine of fairness, and is based instead on the more basic public interest requirements expected of broadcasters.

CBS attempts to shrug off its responsibilities vis-a-vis advertising aimed at this unique audience,^{1/} claiming that there is no empirical evidence that children are harmed by commercials.

^{1/} By "children's advertising" the Council means commercials aired during programs specifically designed for children from 2 to 12 years of age. Purely for the sake of administrative simplicity, the Council chose to focus on advertisements aired during Saturday and Sunday morning children's programs (Exh. A, p. 2, n. 2). However, the Council wishes to note that vast numbers of children watch programs that are designed for adult viewers (Exh. B, p. 13), and that the Council's concern with advertisements extends to all commercials aired during programs for which children comprise a substantial portion of the audience.

Without such evidence, CBS argues, its advertisements cannot give rise to any legal obligation. (Exh. B, p. 2).

It is true that there has been no single study of nationwide scope and impact that conclusively demonstrates that advertising is inherently harmful to children. But there has been sufficient research in this field to create a general consensus that advertisements do practice a special kind of deception on children, who are susceptible to various advertising techniques and lack the discrimination we assume adults have developed.^{2/} The harm may not have been proven beyond scientific question, but at least substantial questions as to the potential risk of harm have been documented.

The consensus was summarized by FTC Chairman Lewis A. Engman in a June 3 speech to the American Advertising Federation:

I will not take your time explaining why youthful susceptibilities warrant special protections . . . I will only say that it is a public policy deeply imbedded in the common law and in our statutes that children should be protected from their own vulnerability.

The Federal Trade Commission has consistently recognized the special duties and liabilities of persons dealing with children in a commercial context.

^{2/} See, e.g., Robertson and Rossiter, "Children and Commercial Persuasion"; Ward and Wackman, "Effects of Television Advertising on Consumer Socialization"; Lewis A. Engman, Chairman, FTC, Address to the American Bar Association, August 6, 1973; Statement of Joan Gussow, nutrition educator at Columbia University, reprinted in Broadcasting, April 8, 1974 p. 22.

Moreover, numerous non-legal authorities have established what might be considered a moral and ethical consensus that commercial manipulation of children cannot be tolerated. (Broadcasting, June 10, 1974).

You expressed similar sentiments in a May 23, 1974 speech to the National Association of Television Arts and Sciences in Atlanta. (Broadcasting, May 27, 1974).

Moreover, the demands of hundreds of thousands of ^{3/}citizens for reform in the area of broadcast children's advertising is proof enough of the intense public concern -- and therefore the unique public interest considerations -- surrounding this issue. This public concern has sparked investigations by Congress, the FTC and the FCC into television's impact on children, with particular recent emphasis ^{4/}on children's advertising.

In view of this widespread public concern and governmental activity, CBS, which broadcasts thousands of

^{3/} The Action for Children's Television petition to eliminate all advertising from children's television (Docket 19142) generated 100,000 supporting letters.

^{4/} For the last several months, the FTC has been meeting with consumer and industry representatives to develop a voluntary code on children's advertising. You indicated to Congress at FCC oversight hearings in March, 1974 that children's television and advertising questions will receive top priority on the Commission's agenda. At the FTC oversight hearings in mid-May, Chairman Engman promised Senator Pastore's Committee that his agency would also take action in this area, and, in fact, the FTC issued proposed guidelines aimed at premiums on June 27, 1974.

5/ children's ads each year, is hard pressed to now argue that it incurs no obligations in this area on the ground that consumer groups lack absolute, final "proof" of advertising's harmful effects on children. CBS's objection goes more to the question whether advertising for children should be banned from the airwaves as inherently dangerous and/or misleading. For such a governmental move, perhaps more research is warranted. But the Council specifically did not aim its present complaint at the abolition of all children's ads. In order to trigger CBS's obligation to provide additional information on advertising, the threshold of proof of harmful effects should be far lower than that for a complete ban.

For this reason, CBS should not be allowed to once again request deferral to the Commission's rulemaking on the Action for Children's Television petition to eliminate advertising from children's programs (Docket 19142). (Exh. B, pp. 2-3). This proceeding has been pending for four years. Meanwhile, the average child has seen close to 80,000 advertisements. Broadcasters and the Commission should not avoid their responsibilities to children any longer. The risk of harm to children, even if the extent of that harm is not conclusively proven, is too great.

5/ The Council cited three children's ads broadcast by CBS that it found particularly objectionable and representative of the kind of advertising techniques children must be taught to understand and guard against (Exh. A, Attachments B-D).

Further, the Commission's recent resolution of the Fairness Doctrine Inquiry does not resolve this issue. On July 12, 1974 the Commission released its ruling against the application of the doctrine to most product commercials' implicit messages. But this complaint is premised, even as to that one issue, on the unique nature of the audience to which those implicit messages are directed. And, in addition, we raised two other issues. One, CBS's affirmative duty under Section 315 to present information on the controversy over children's advertising, which does not arise from an implicit message theory, was specifically reaffirmed by the Fairness Report (p. 10). The other, its basic public interest duty, exclusive of Section 315, to present vital information to children, was not foreclosed by the Commission's decision not to repeat its cigarette advertising ruling (Fairness Report pp. 35-39).

With regard to this second duty, the responsibilities incurred by broadcasters like CBS who air advertisements aimed at children involves not only keeping objectional advertising off the air, but also educating children about advertising. (Exh. A, pp. 13-25). When the Commission recognized a similar

educative obligation in the Applicability of the Fairness Doctrine to Cigarette Advertising (WCBS), 9 F.C.C. 2d 921^{6/} (1967), the focus was on a particular hazardous product. It has now decided that determinations about particular product hazards might be best left to Congress. (Fairness Report, p. 37, n. 22). Here, however, the Council is concerned not with a distinct product, but with advertising itself, its effect on a traditionally protected class of susceptible viewers and the possibility of harm to that class.

We are concerned not with warning children and parents about the particular products that children see advertised, although that type of consumer information is crucial, but about the form, type and intent of advertising itself. Children have no understanding of the marketplace, have no comprehension of "comparative shopping" techniques and therefore have no reason to try to be prudent consumers. Television commercials, even the non-excessive ones, are basically pro-consumption messages using various visual and aural advertising techniques to urge product purchase. Surely the broadcasters who air those commercials have an obligation to help teach children to be able to discriminate among these messages, and consume prudently.

^{6/} Which was essentially based on public interest, not fairness doctrine, grounds. See Henry Geller, The Fairness Doctrine in Broadcasting (1973) at 83-84.

by informing them about advertising techniques such as hero endorsements, premiums, symbolism and puffery, the differences between entertainment and advertising material, and the persuasive intent of advertisements. We believe that this obligation is at the heart of licensee public interest responsibility and that the Commission is uniquely qualified to determine and enforce it.

Thus children's advertising is far more appropriate for Commission resolution on public interest grounds than was the cigarette case for at least two reasons. First, here the Commission is dealing with a special segment of the broadcast audience, traditionally protected by regulation. For this reason, a broadcaster's treatment of its young viewers must be carefully scrutinized by the Commission in areas of both programming and advertising.

Secondly, the Commission is not being asked to look at particular advertised products and the claims for and against them, but is being asked to take a broad policy look at the nature of advertising itself as it relates to this unique audience. Since broadcast advertising is at the heart of our commercial television system, the Commission is the appropriate

body to undertake this task. For these reasons the Commission's reluctance to involve itself in complaints involving the safety, merits and efficacy of various advertised products in the name of the public interest should not apply.

Advertising education could be conveyed in all types of programming formats, from PSA's and spot announcements to segments of regularly broadcast children's programs. The Commission need not unduly restrict broadcasters in their choice of proper vehicles for such information. It should only require that such information be conveyed in a manner designed to effectively reach the same audience as children's commercials and to enable that audience to become prudent selectors of products advertised.

2. To Date CBS's Programming Efforts Have
Not Fulfilled Its Public Interest
Responsibility To Educate Children
About Advertising

In response to the Council's charge that CBS has failed to perform this important educative function, the network alleged that it had fully met its obligations toward children in three ways: (1) general children's programming (Exh. B at 13-16); (2) advertising clearance policies and practices (Id. at 16-18); and (3) special programming relating to children's advertising issues (Id. at 18-21). None of these programming efforts and policies, however, have provided children with the type of educational material the Council stated was required in the public interest in its March 21 letter.

While CBS may be commended for its general children's programming efforts to achieve other social purposes, none of the programs it describes on pp. 13-16 of its response are designed to or do educate children as to the form and intent of television commercials per se. None are designed to help the child become consumer wary.

For example, "Fat Albert and The Crosby Kids" is, by CBS's own description (Exh. B, p. 15), dedicated to "pro-social messages" such as lying, playing hooky, cheating, ganging up, frustrations, anger and tattling. These messages perform an important educative function for young viewers, but they do absolutely nothing to inform that same audience about the commercials aired during each "Fat Albert" broadcast.

In much the same way, CBS's methods for selecting advertisements seen by children may be commendable,^{1/} but again they do nothing to educate children about CBS ads. The child and its parents should be provided with their own tools to assess commercials and their techniques of persuasion, even if the CBS screening team, or any other review authority, has deemed them acceptable. Any other approach smacks of paternalism foreign to our sense of citizen participation.

^{1/} The Council also questions the effectiveness of the screening process if the two toy ads that were discussed in the March 21 letter were approved under the present CBS review procedures and policies (See Exh. A, pp 24-29).

Finally, CBS describes the PSA's and other programming that it claims relates specifically to children's advertising and fulfills the public interest requirements outlined in the Council's letter. (Exh. B, pp. 18-21). However, the programs listed by CBS, with only one exception,^{7a/} seem to relate entirely to the specific products that are advertised, rather than advertising per se.

But the Council's demand for education is directed not at products, but at ads themselves. Therefore it cannot be met by nutritional, health or safety information about particular products or types of products. Such messages are extremely important, and, if anything, should be amplified and increased. But they do not meet the fundamental lack of broadcast information on the nature and processes of advertising directed to children.

In short, none of the programming or procedures described by CBS respond to the Council's call for education for children about advertising. In this respect, CBS has yet to completely fulfill its public interest responsibilities toward children.

^{7a/} The single CBS-aired news item relating to children's advertising, on the CBS Morning News of March 5, 1974 (Exh. B, p. 20), appears to have been geared to adults, not children. Although the Council believes parents must also be made aware of how commercials may affect their children, it is primarily concerned with the education of children. It is unfortunate that CBS has chosen to neglect this type of education, even though it currently airs programs, such as "In The News", that would be natural vehicles for such informational programming.

B. CBS HAS VIOLATED THE FAIRNESS DOCTRINE

Although the Council believes CBS's obligations relate most directly to its basic public interest responsibilities, it also charges CBS with violating Section 315 of the Communications Act.

The Commission and the courts have recognized that broadcasters have a two-fold obligation under the fairness doctrine.^{8/} First, licensees must inform the public of controversial issues of public importance. Second, they must present this information fairly, giving the public the opportunity to be apprised of contrasting viewpoints on the issue in question.

Children's television advertising, in and of itself, is undisputedly a controversial issue of public importance. More specifically, there is an ongoing debate in the private, public and governmental sectors whether, in view of the evidence of a child's inability to critically evaluate advertisements, children should be exposed to television

^{8/} Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 394 (1968); Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246. This dual duty was reaffirmed in the recent Fairness Report (p. 10).

commercials that urge them to use, consume and purchase various products. Children, being vulnerable, must be protected from advertisers who may take advantage of their gullibility. Elimination of commercials or regulation in terms of their placement, number, frequency and repetition are important aspects of this vital question. The Council does not seek to eliminate children's advertising, but believes that broadcasters are obligated to protect children through education about commercial techniques.

With respect to this issue, CBS has violated both of its fairness doctrine obligations.

1. CBS Has Failed to Adequately Inform
the Public of the Children's
Advertising Issue

In its Fairness Report, the Commission spells out the indicia of "public importance" and "controversiality" (p. 16). In order to classify an issue as controversial or of public importance, the degree of coverage in other media, attention from government officials and community leaders and the impact of the issue on the community at large must be examined and evaluated. (Ibid.). According to any or all of these criteria, the children's advertising question is most clearly a controversial issue of public importance.

In its March 21 letter, the Council demonstrated the public importance and controversiality of children's television advertising. It listed the scores of private, public and governmental studies, articles and news stories on this issue.^{9/} In the last three months, the print media's coverage of the question in general and of agency action in this area has been even more extensive,^{10/} due, in part, to several major developments.

For instance, in late May, informal proceedings at the FTC culminated in an industry proposal for voluntary action on children's advertising unacceptable to consumer groups. On May 27, you announced that FCC action in this area was imminent. In early June, FTC Chairman Engman announced that his agency planned to act on premiums and hero endorsements. In late June, the FTC issued proposed guidelines

^{9/} See listings appended to the Council's March 21 letter as Attachment A.

^{10/} Since March, 1974, the Council has noted the following articles and news stories: "Scrutinizing Kiddie TV Advertising", Washington Post, March 15, 1974; "The Pied Pipers of Television", Washington Post, April 28, 1974; "TV Kids' Ads: FTC Action?", Washington Post, May 10, 1974; "Children's TV: Breaking the Snare", Washington Post, May 19, 1974; "TV Ads and Kids", Washington Post, May 21, 1974; "On Regulating Kids' TV Advertising and Programming", Washington Post, May 24, 1974; "Caveat Vendor", Newsweek, June 17, 1974; "Not for Children", New York Times, June 18, 1974; "Children's Television Advertising", Washington Post, June 20, 1974; "Restricting Advertising on Children's TV", Washington Post, June 28, 1974. In addition, Broadcasting Magazine and Advertising Age have carried almost weekly coverage of this issue.

to ban the advertising of premiums. Concurrently, the Code Review Board of the National Association of Broadcasters proposed to reduce the number of ads per hour of weekend children's programming to 9 1/2 minutes by the end of 1975 and a ban on the advertising on nonprescription medications ^{11/} to children.

Yet two of the major national networks, including CBS, have, as the Council's has shown, ^{12/} consistently chosen to remain practically silent on this issue of vital public ^{13/} concern.

CBS's response to the Council's charge is predictable. After waving the flag of journalistic discretion, it proceeds to list its sparse programming efforts in this area to demonstrate that it has, in fact, kept the public informed. (Exh. B, pp. 8-12).

^{11/} None of these reforms, however, go to the issue presented by this complaint.

^{12/} The Council bases its contention that CBS has failed to provide adequate coverage of this issue on regular viewing of CBS news and public affairs programming, as well as research conducted through the Vanderbilt News Archive. (Exh. A, pp. 7-8).

^{13/} NBC has provided the public with more information on the children's advertising issue than either of the other two networks. (See Exh. A, pp. 31-32). It has, for example, covered FTC Chairman Engman's denunciation of premiums aimed at children on June 3, 1974.

It is true that the Commission cannot intrude too deeply into the decision-making processes of licensees' news departments. But it cannot allow a broadcaster to avoid its obligation to inform the public in the name of licensee discretion. The First Amendment paramountly protects the public's right to be informed, not CBS's right to selectively feed information to its viewers. (Red Lion, supra, 395 U.S. at 390).

Moreover, it is critical to note the distinction between two types of "news management" complaints which the Commission considers. One is the claim of slanting or staging of news leading to general ideological one-sidedness on public issues. Here the Commission is reluctant to invoke its powers ^{14/} for fear of censorship. The other type of news management involves the manipulation of news to further the licensee's own private business interests at the expense of the public interest. The Commission traditionally is less concerned about investigating the latter type of news management, feeling that the censorship potential of such cases is outweighed by the fundamental incompatibility of such practices

^{14/} See, e.g., CBS "Hunger in America", 20 F.C.C. 2d 143 (1969).

and a licensee's public trustee responsibilities.^{15/} The latter issue is the one involved herein, and is clearly suitable for Commission investigation.

It is clear from the information that CBS itself provided (Exh. B at 8-12) that in the last three years the children's advertising issue has received only the barest attention from the CBS network, hardly enough to adequately inform the public of the existence of the controversy, much less its importance. In the last four years, during which time the issue of children's advertising has led to governmental investigations and received pervasive print coverage, CBS has seen fit to devote an average of slightly more than one network news item per year to the subject. Of the five listed by CBS, two were actually more concerned with nutrition than advertising. (Exh. B, p. 11).

Besides these 5 arguably relevant news items, the only CBS network public affairs program touching on this issue was "You and the Commercial". As commendable as that program was, it still only dealt with children's advertising very briefly.

^{15/} See, e.g., NBC, 14 F.C.C. 2d 713 (1963); Gross Telecasting, 34 Fed. Reg. 14757 (April 26, 1974).

The performance of CBS's owned and operated stations has been correspondingly poor. Of the seven news items listed, (Exh. B, p. 11), three seem again more related to nutrition than advertising, leaving only four where the children's advertising issue was specifically addressed.

While CBS has not been totally silent on children's television advertising, its coverage has been paltry compared to the controversiality and importance of the issue. It has clearly not adequately taken affirmative steps to inform its viewing audience about this issue according to its duty under the fairness doctrine.

2. CBS Has Failed to Present Opposing Viewpoints in Contrast to the Position on Children's Television Advertising Reflected in the Advertisements it Airs During Children's Programs

While CBS has failed to give adequate explicit coverage to the children's advertising issue--that is, whether children should be solicited by commercial messages and, if so, whether and how those messages should be regulated--it has at the same time implicitly presented one side of that issue with each commercial it airs during its children's programs. (Exh. A, pp. 9-13). CBS responded to this "lack

of balance" allegation on two grounds. First, it argued that the broadcast of product advertisements per se does not invoke fairness doctrine obligations. (Exh. B, pp. 4-8).^{16/}

In this case, however, where the controversy is whether children should be exposed to any advertising (without at least being informed as to its techniques and intent), the broadcast of any advertisements directed to children must implicitly present a position on that issue.

In this respect, the instant situation differs from past Commission decisions applying the fairness doctrine to advertising, which were addressed in the recent Fairness Report.^{17/}

In those cases, the product advertised or the content of the commercial was the heart of the controversy. The controversy here in large part surrounds the very concept of advertising aimed at children. In this situation, then, the broadcast of the commercial would per se raise fairness doctrine obligations unlike any case heretofore decided or policy addressed by the Commission.^{18/}

^{16/} CBS admitted, however, that a commercial may raise a controversial issue. (Exh. B, p. 4, n. *).

^{17/} E.g., WCBS, supra; Friends of the Earth v. FCC, 449 F.2d 1164 (D.C. Cir. 1971); Retail Store Employees Union v. FCC, 436 F.2d 248 (D.C. Cir. 1970).

^{18/} For similar reasons the Commission's decision in Letter to Earl K. Moore, FCC 71-1097, October 26, 1971, cited by CBS in its response, is distinguishable from this case.

For this reason, CBS's attempt to distinguish the ^{19/} major precedents in this area is misdirected (Exh. B, pp. 5-8). These three major cases were cited by the Council as precedent for the proposition that advertisements may, at least in unique situations, raise controversial issues by implication, even if they do not explicitly express a ^{20/} controversial position on a public issue. The Council never contended that the fairness doctrine issues presented in those cases were identical to the ones at stake here. On the contrary, the Council believes that because of the special nature of the class it seeks to protect--children--and its focus on the nature of advertising rather than specific products, both its public interest and fairness doctrine complaints present unprecedented considerations, requiring unprecedented Commission action.

CBS's discussion of the Banzhaf and Friends of the Earth decisions in fact supports the Council's position. If

^{19/} See p. 20, n. 17, supra.

^{20/} Additionally, the Banzhaf and Friends of the Earth cases were cited to support the Council's notion of a public interest responsibility, transcending traditional notions of fairness, when special circumstances, like the protection of children, are present. As previously noted, even if these particular precedents are undermined by the Fairness Report, the public interest standard remains the prime touchstone of Commission regulation, and must be applied to this case.

it is true that these cases cannot be divorced from the particular product advertised then their rejection by the Commission in the Fairness Report shows that the instant case must be looked at de novo, since it does not involve a product at all.

The theme that runs through both cases on the appellate level is one of public health and the requirement to educate the public in the public interest. These public interest considerations cannot be summarily dismissed as a basis for Commission decisions, even if their application to particularly dangerous products is determined by the Commission to be more appropriate for other agencies of government. ^{21/} Children's advertising is a situation where the total well-being of the nation's children is at stake, and no one product is involved. The basic rationale for the Banzhaf and Friends of the Earth decisions--a compelling need to protect the public by educating viewers about commercial messages--is far more applicable here than in those decisions themselves.

Similarly, while Retail Store Employees was cited by the Council for its language recognizing that advertisements

^{21/} Fairness Report, p. 37, n. 22.

could take implicit positions on controversial issue, (436 F.2d at 258), it, too, was based on overriding public policy considerations. Noting that the fairness doctrine was only one aspect of the Commission's regulation in the public interest, the Court ordered the Commission to consider a fairness doctrine violation implicitly raised by advertisements that touched upon the congressional policy of equality of bargaining power. (*Id.* at 259).

In short, the public interest rationale behind these three cases, even if no longer applicable to particular products, do support the Council's argument for an overriding public interest requirement to protect children through education about advertising.

CBS's second line of attack on the Council's fairness doctrine "balance" complaint is based on the programming it claims adequately presented contrasting viewpoints on the children's advertising issue.

The inadequacy of this programming has already been discussed (pp. 18-19, supra). For the same reasons that this scant coverage of the children's advertising issue does not meet the requirements of the first leg of the fairness doctrine, it similarly does not adequately balance the

implicit message of thousands of children's commercials. Moreover, all of the programming CBS lists is adult-oriented. It certainly would not present contrasting viewpoints to the vast audience of children who watch the commercials that give rise to fairness obligations.

Both the Commission and the D.C. Court of Appeals have recognized that when one position on a controversial issue is repeatedly presented, such as in recurring spot advertisements, the requirements of the fairness doctrine are not met by the airing of one or two contrasting positions. In WCBS, supra, the Commission stated that

. . . while the Fairness Doctrine does not contemplate 'equal time', if the presentation of one side of the issue is on a regular continual basis, fairness and the right of the public adequately to be informed compels the conclusion that there must be some regularity in the presentation of the other side of the issue. (9 F.C.C. 2d at 941).

Affirming the Commission in Banzhaf, supra, the Court of Appeals stated:

the mere fact that information is available, or even that it is actually heard or read, does not mean that it is effectively understood. A man who hears a hundred 'yeses' for each 'no'. . . cannot be realistically deemed adequately informed. (405 F.2d at 1082).

The Court of Appeals reiterated this principle in Retail Store Employees, supra, where it held that one round table discussion about a union boycott could not even roughly "balance" the effect of a thousand spot advertisements urging the public to patronize the boycotted store. (436 F.2d at 258).

Children view thousands of television advertisements on CBS every year. There is a large body of public opinion that believes children should never be urged to use, consume and buy products by television advertisements. CBS's cursory coverage of this viewpoint cannot be deemed sufficient to inform either parents or children of different sides of the children's advertising controversy. In particular, CBS has presented children with virtually no programming about advertising that would counteract the pro-consumption effect of the commercials they see.

C. CONCLUSION

CBS has fallen short of its basic public interest obligations, as well as its duties under the fairness doctrine. The Council first raised its concerns with the network, attempting to meet the Commission's requirement of good faith

attempts to resolve disputes between citizens and broadcasters outside its legal processes. CBS chose to deny its responsibilities to children rather than accept the mandate of the Communications Act. As a result, the Council has been forced to come to the Commission to seek enforcement of this obligation.

We urge the Commission to reaffirm broadcasters' obligations to children by requiring CBS to present information to children that would educate them about television advertising, both as a fundamental public interest duty and to balance the message of the thousands of commercials viewed by children on the CBS network each year. CBS could produce such informational programming on its own or could seek the assistance of qualified organizations to develop these broadcasts.

We also urge the Commission to investigate CBS's failure to inform adult viewers of the children's advertising issue to determine whether it has violated the first, as well as the second leg of its fairness doctrine obligations.

Respectfully submitted,

Ellen S. Agress

Ellen S. Agress

Frank W. Lloyd

Frank W. Lloyd

Citizens Communications Center
1914 Sunderland Place, N.W.
Washington, D.C. 20036

Counsel for the Council on Children,
Media and Merchandising

cc: Ralph E. Goldberg
Counsel for CBS

Exhibit A

March 21, 1974

Mr. Arthur R. Taylor
President
Columbia Broadcasting System, Inc.
51 West 52nd Street
New York, New York 10019

Dear Mr. Taylor:

This letter is written on behalf of the Council on Children, Media and Merchandising (hereinafter the "Council"), to express the view that CBS has been remiss in its public interest obligations as they pertain to children's advertising.

The Council, an organization actively involved in critically examining the mass media's commercial impact on children, has previously contacted CBS on this subject. In a letter dated May 7, 1973, the Council ^{1/} described CBS's failure to live up to its fairness doctrine obligations in

^{1/} Through its attorneys at that time, the Media Access Project.

Mr. Taylor
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the areas of both programming and advertising directed to children. Your network responded in a letter of July 6, 1973, attacking the legal sufficiency of the Council's fairness doctrine allegations, and offering no suggestions for voluntary improvement of your service to children watching CBS. So far as the Council can tell the condition of children's television on CBS has not significantly improved to date.

Since last summer, the Council has continued to analyze children's television. In so doing, it has narrowed the issues of its greatest immediate concern. All subjects addressed by the May 7 letter still concern us greatly. But perhaps we could achieve more progress in this area by narrowing the issues we previously discussed and focusing on the advertising aired on your network that is aimed at children. Thus this complaint is about commercials which are aired by your owned or operated stations during network programs that are specifically designed for an audience under 12 years of age. ^{2/}

^{2/} These programs--both animated and non-animated--are usually broadcast on Saturday and Sunday mornings. Although vast numbers of children watch television programs during the afternoon and in prime time evening hours, and in many cases outnumber the adult audience for such programs, we will confine this complaint for the sake of simplicity and clarity, to programs that are created and produced for audiences in which children are in the majority. These generally are aired in the early parts of the Saturday or Sunday broadcast day.

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The Council also wishes to direct its complaint to CBS less within the narrower confines of Section 315 and the related "fairness doctrine" than on the broader, more fundamental public interest standard of the Communications Act. As the discussion below will demonstrate, the current situation in children's television advertising does present important fairness doctrine questions. However, the Council believes that because its complaint deals with a special class of CBS audience--children--it transcends traditional notions of fairness. CBS has failed to meet its fundamental public interest licensee obligations to the children comprising its audience.

The Council's contention is basically that CBS is, on one hand, willing to bombard the children of its audience with messages that urge consumption, use and purchase of various commodities, yet, on the other hand, the network is unwilling to educate children to critically evaluate and understand commercials. Nor does CBS seem willing to inform parents about the sophistication of the techniques used to solicit their child, the impact and effect advertisements

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may have on their children's values or the controversy surrounding children's advertising. While evading education of children, CBS also denies parents the necessary knowledge to more effectively deal at home with the child's reaction to advertising.

1. CBS Has Violated Its Statutory Obligations to Cover the Issue of Children's Advertising in Its Programming

CBS's obligations in the area of children's advertising can be viewed in terms of its specific statutory requirement to afford reasonable opportunity for the discussion of controversial issues of public importance contained in Section 315 of the Communications Act. Children's television advertising is a controversial issue of public importance. More specifically, questions have been raised in private, public and governmental forums whether, in view of the evidence of a child's inability to critically evaluate advertisements,^{3/} children should

^{3/} See, i.e., Robertson and Rossiter, "Children and Commercial Persuasion: An Attribution Theory Analysis"; Ward and Wackman, "Effects of Television Advertising on Consumer Socialization"; Lewis A. Engman, Chairman, FTC, Address to the American Bar Association, August 6, 1973. Other sources are discussed throughout this letter.

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be exposed to television commercials that urge them to use, consume and purchase various products.

The controversiality of and the widespread public interest in the subject of children's television advertising cannot be denied. The Council's letter to CBS last May listed many articles, studies and government proceedings concerned with this subject. Since its May 7 letter, the Council has noted several other articles in the local Washington press which deal with children's television and advertising. It is safe to assume that similar coverage of this issue has been prevalent throughout the country.^{4/} Both the F.C.C. and the Federal Trade Commission--the latter quite recently--have investigated children's advertising.^{5/} FTC Chairman Engman's August 6, 1973 speech to the ABA, cited above, further awakened the public conscience to the need for action in this area. In the past month Congress has been

^{4/} A partial list of these reports, studies and articles is appended hereto as Attachment A.

^{5/} The December 3, 1973 issue of Advertising Age reported the activities of consumer groups in drafting a children's advertising proposal for submission to the FTC. According to the January 25, 1974 issue of the New York Times, this proposal was submitted on January 24th.

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holding hearings related to children's advertising.^{6/} As a result of those hearings, the National Advertising Review Board has announced it will more diligently police commercials aimed at children.^{7/} Finally, as we note in greater detail herein, another major network, NBC, has last fall and this winter presented some public affairs programming specifically addressed to the children's television issue.

As the Supreme Court stated in Red Lion,^{8/} broadcasters such as CBS and its affiliates are given a monopoly license to scarce frequencies "as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern." Secondly, CBS has the duty to cover such issues fairly. It cannot present only one side of such matters of public concern, but must affirmatively seek out the conflicting viewpoints on such

^{6/} Consumer Subcommittee of the Senate Commerce Committee, March 7, 1974; Senate Appropriations Subcommittee, March 8, 1974; House Appropriations Subcommittee, March 12, 1974.

^{7/} Washington Post, March 8, 15, 1974.

^{8/} Red Lion Broadcasting v. F.C.C., 365 U.S. 367, 394 (1968).

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issues. This is the traditional "fairness doctrine." This two-fold duty is, as you know, set forth in the F.C.C.'s 1949 Editorializing Report^{9/} and codified into law by the 1959 Amendments to the Communications Act, which require broadcasters to "afford reasonable opportunity for the discussion of conflicting views on issues of public importance," as part of their basic duty "to operate in the public interest."^{10/}

As to the first requirement, which is the essence of the licensee's obligation in issue-oriented coverage, except for its implicit presentation of one side of the issue of children's advertising by airing of the ads themselves, as discussed below in detail, CBS has failed to carry out its affirmative duty to explicitly cover the issue at all (or to any significant extent, so far as the Council can determine after exhaustive efforts).

The Council's May 7 letter to CBS noted that CBS had consistently failed to cover news events in this

^{9/} Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949).

^{10/} 47 U.S.C. § 315(a).

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area, such as the F.C.C., F.T.C. and Congressional hearings and inquiries into children's television. More recently, CBS presented no news coverage of the consumer proposal requested by and submitted to the F.T.C. on children's television advertising, which was detailed in the January 25, 1973 Times article mentioned above. Nor has it covered the Congressional hearings of recent weeks. To our knowledge, CBS has only tangentially addressed this issue once in its news programming, despite the fact that the print media has continued to find it an area worthy of repeated coverage.^{11/}

^{11/} According to the Vanderbuilt T.V. News Abstracts for the period March 6, 1973 to December 20, 1973, the only exception to CBS's silence was its brief coverage of the F.T.C. ruling concerning Wonder Bread advertisements, which was reported by CBS on its November 5, 1973 news broadcast. Since the Vanderbuilt collection does not include public affairs offerings or other programming, the Council has relied upon its reading of T.V. Guide and the regular viewing of Council members and staff to determine that no other programming on these issues has been explicitly presented by CBS, with the exception of a single brief treatment as part of a documentary entitled "You and the Commercial", aired in April, 1973, which was primarily devoted to other aspects of television commercials.

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2. CBS Has Failed to Meet Its Fairness Doctrine Obligations by Airing Commercials that Implicitly Present One Side of the Issue of Television Advertising Directed to Children, Without Airing Contrasting Viewpoints on that Issue or Consumer Information for Children

Thus, CBS's record of explicit presentation of views on this controversial issue in its program material is woefully inadequate to meet its obligation under the basic, affirmative issue-presentation duty under Section 315 of the Communications Act. On the other hand, however, it has continually and pervasively presented one side of the television advertising for children controversy implicitly, by its presentation of advertising for children. Thus, it has, in a very real sense, violated the second part of the fairness doctrine as well--the duty to balance competing viewpoints when it presents one side of an issue.

Television commercials aimed at children by implication present one side of the controversy surrounding children's television advertising. Since that issue is, in large part, premised on the very serious question whether advertisements should ever be designed to urge and convince

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children to make consumer decisions, the very existence of advertisements that are geared toward children as consumers and presented on programming directed at children, constitutes an implicit position on the issue of whether children should be exposed to advertising on television. The Commission and the courts have often recognized that advertisements may raise controversial issues by implication, rather than explicitly. Friends of the Earth v. F.C.C., 449 F.2d 1164 (D.C. Cir. 1971); Retail Store Employees Union v. F.C.C., 436 F.2d 298 (D.C. Cir. 1970), Applicability of the Fairness Doctrine to Cigarette Advertising, 9 F.C.C. 2d 921 (1967) (hereinafter "WCBS"), aff'd sub. nom. Banzhaf v. F.C.C., 405 F.2d 1082 (1968), cert. denied, 396 U.S. 842 (1969).

While CBS has presented the pro-advertising to children side of the issue, on the other side, there are groups who feel that children should not be exposed to television ads at all. Action for Children's Television (ACT) is one such group, and was the initiator of a proceeding to eliminate such commercials that has been under

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F.C.C. consideration for the last four years. (F.C.C. Docket No. 19142). The Council presents still a third viewpoint. While seeking moderation of commercials soliciting children, it feels that the psychological persuasion of TV ads which bombard children daily at the least should be offset by programming which educates children about advertising messages and methods. The Council believes that providing more information to the audience of children's advertising may well remove the need for total elimination of such advertising. In other words, the avid consumer advocacy of television ads--urging children to use and consume without apparent restriction--should be "balanced" by programming that teaches the child to be an educated consumer and to make consumer decisions based on informed choices. The solely pro-consumption message of the ad, which is often advanced by advertising techniques that are far beyond a child's interpretive powers, should be supplemented by materials that give children the tools by which to evaluate these techniques and learn how to separate "puffery" and fantasy from fact.

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But CBS has failed to present the viewpoints of ACT or the Council, or any other viewpoints in contrast to those implied in the ads themselves, either by informing parents and the public at large of the controversy engendered by children's television advertising or by presenting educational material that would advise children and the general public of the problems raised by critics of these commercials. CBS's silence extends to (1) its failure to "balance" the advertisements it carries with either "counter-advertisements" or programming presenting other viewpoints on the issue--such as that children should not be the focus of advertising efforts--and (2) its failure to educate children through programming or "counter-ad" material to approach commercials with a more discriminating eye.^{12/}

^{12/} Besides surveying CBS news and public affairs programming, as noted in footnote 11, supra, the Council has attempted to establish the absence of this type of program material by regular viewing. Robert Choate, President of the Council, watches an unusual amount of children's programming. He has never seen the type of educative "counter-advertising" or other programming on CBS that would provide a child with meaningful intellectual tools for viewing commercials. Moreover, CBS's refusal to respond positively to the Council's May 7 request to supply information concerning children's programming and advertising--especially when the other major networks did supply this information--strongly indicates that CBS has not covered "both sides" of the children's advertising issue.

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CBS currently broadcasts excellent examples of the latter type of educational programming for children in other areas. Its 3 minute broadcasts entitled "In the News" demonstrate that concise, issue-oriented spots for children are both possible and highly successful. Similar short broadcasts of information for children on advertising techniques and advice would be equally valuable.

3. Even If the Fairness Doctrine Were Held Not to Apply Generally to Product Commercials, the Basic Public Interest Standard Requires CBS to Take Account of the Unique Needs of Children as a Special Audience and Provide Programs, PSA's or Counter-Ads to Meet Their Needs

Thus, the Council believes that it has made an adequate showing both that CBS has not met its affirmative obligation under Section 315 of the Communications Act to present explicit coverage of the children's television advertising controversy, and secondly, that implicitly, through its presentation of such advertising, it has at the same time been unfair in failing to provide either counter-commercial or programming time for alternative views on

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children's ads under traditional fairness doctrine precepts developed under Section 315 to require at least the presentation of such alternative views when the other side is presented.

However, the Council does not feel it necessary to proceed solely on these two grounds, for it believes that CBS's duty goes beyond its affirmative duty under Section 315 or the fairness doctrine requirement of balancing views to more basic public interest considerations embodied in the Communications Act. We further believe that if CBS began to educate its audience about children's advertising it would take a major step toward fulfilling both its traditional affirmative coverage of issues and fairness duties and its broader public interest obligations.

Both the Commission and the courts have recognized a licensee's public interest obligation to protect the public from objectionable advertising.^{13/} The prime example

^{13/} The Supreme Court recognized this principle in Head v. Board of Examiners, 374 U.S. 424 (1963).

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of this policy is, of course, the cigarette advertising case. (WCBS, supra). While the problem of cigarette commercials was addressed in fairness doctrine terms, both the Commission and the Court of Appeals noted that requiring counter-commercials on cigarettes was more a public interest than a fairness doctrine ruling. Recognizing the well-documented evidence of the health hazards posed by smoking, the Commission stated that to require broadcasters to inform the public of this hazard was simply a practical ruling required by the public interest:

. . . ordinarily the question presented would be how the carriage of such commercials is consistent with the obligation to operate in the public interest. . . . The requirement stems not from any esoteric requirements of a particular doctrine but from the simple fact that the public interest means nothing if it does not include such responsibility.^{14/}

Affirming the Commission in Banzhaf v. F.C.C., supra, the Court of Appeals noted that fairness doctrine or public

^{14/} 9 F.C.C. at 20. Commissioner Loevinger had grave misgivings over whether the fairness doctrine could be applied to cigarette advertising, yet he concurred in the Commission's result on public interest/public health grounds. Id. at 952.

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interest rulings basically raise identical questions of whether the public interest is served. The fairness doctrine, it noted, is in effect one means of fleshing out the policy bones of the general public interest standard under which licensees must operate. 405 F.2d at 1093.

In the cigarette advertising case, the Commission and the Court rooted broadcasters' public interest responsibility in the public health considerations springing from documented proof of the health hazards posed by smoking of cigarettes. The focus there was on the product, and some would argue that the focus was on a unique product, rather than on applications of the fairness doctrine per se. Here we would argue for a public interest standard based on the welfare of the nation's children--a traditionally protected class--which is surely no less compelling. Even if the fairness doctrine is held not to automatically extend to implicit controversial issues of public importance raised by product advertisements or television, this unique class of viewers would still be worthy of special protection under the broader public interest standard. It is interesting to

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note, moreover, that both the agency and the Court mentioned the effect of cigarette advertisements on the young as a ^{15/} basis for their rulings in WCBS.

The ultimate effect of advertising on a child's well-being is not yet fully documented or understood and additional research in this vital area is sorely needed. Enough is known, however, that CBS should recognize that it should not delay to the last minute adoption of positive policies to ease parental concerns and unknown dangers that may be inherent in such advertising. For example, there is documented evidence that younger children, in particular, are unable to critically evaluate advertising directed to them, or often even to discriminate between what is entertainment and what is advertising material. ^{16/} As a result, a child is likely to perceive an advertising message literally, oblivious to its persuasive intent and misled by what an adult would recognize as creative advertising techniques that do not bear on the product's essential merit.

^{15/} WCBS, supra, 9 F.C.C. 2d at 937; Banzhaf, supra, 405 F.2d at 1098.

^{16/} See p. 4, n. 3, supra.

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For instance, innumerable children's ads sell products on the basis of a premium, through the sponsorship of a TV personality or other "hero" figure or through symbolic messages or fantasy techniques. Such advertising techniques, we believe, should not be directed at a child who cannot separate out the selling of "atmosphere" to determine the true merit and desirability of the product.^{17/} At least, however, so long as CBS continues to carry such commercials it should be willing to provide children with the tools to evaluate such selling techniques.

The inability of children to critically evaluate ads and the need for affirmative broadcaster treatment of them as a special class has been implicitly and explicitly recognized both in and out of the broadcast industry. The National Association of Broadcasters has adopted a "Statement of Principles" on children's advertising because of "special considerations for children". This NAB code became effective on January 1, 1974, and establishes principles and guidelines

^{17/} See testimony of Robert Choate before the Consumer Subcommittee of the Senate Commerce Committee, February 27, 1973.

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to regulate exploitative creative techniques, representations of a child's self concept and his/her relationship to peers, anxiety-provoking material, and encourages disclosure of information on nutrition, the characteristics of the product and documentation of advertising claims. Additionally, the 1973 NAB Television Code recognized (1) the inadequacy of purely visual messages or warnings to convey information to a child; (2) the problems inherent in advertising premiums; (3) the exploitative aspects of urging children to ask their parents to buy a product and other children's advertising problems. Unfortunately, while the NAB has acknowledged these problems in principle, it has so far done very little to regulate these advertising practices.

Moreover, in 1965 the NAB recognized that "since younger children are not in all situations able to discern the credibility of what they watch, they pose an ethical responsibility for others to protect them from their own ^{18/} susceptibilities."

^{18/} Revised 2nd edition of the NAB Toy Guidelines, December, 1965.

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NAB regulation of so-called "adult" advertising for cars, beer, detergents and the like do not extend into these areas, for adults can supposedly evaluate ads without such protection. But the techniques to which the NAB Statement of Principles applies can mislead a child if not curbed or prohibited. Unfortunately, adherence to the NAB Statement of Principles is purely voluntary. And even strict adherence by CBS will not solve the need for educative material broadcast to children on basic consumer principles.

Federal agencies have also been cognizant of advertising's potential impact on children. As previously noted, both the F.T.C. and the F.C.C. have actively investigated this area. In a landmark speech before the ABA, F.T.C. Chairman Engman called for voluntary concerted action in children's television advertising. He noted that "children are not able to make intelligent, educated decisions about consumer goods"; that very young children are "unable to distinguish between the program and the commercial"; and

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that "(d)ue to their relative lack of sophistication and experience, children may be more likely than their parents to misinterpret or misjudge a commercial message." .

The F.C.C. has often recognized that licensees must use particular care in carrying matter which may be ^{19/} harmful, false, misleading or deceptive to a child.

The courts, too, have recognized the special status of children in relation to product advertising. In upholding the constitutionality of the Cigarette Smoking Act of 1969 (15 U.S.C. § 1335) which banned the broadcast of cigarette ads, the D.C. District Court rejected a due process unreasonable classification argument on the grounds that persuasive advertising on broadcast media reached a large ^{20/} audience of young people. The Court thus upheld an advertising restriction which applied only to the broadcast media, finding that the younger the individual the greater

^{19/} See, *i.e.*, Channel 20, Inc., 28 P & F Radio Reg. 1451 (1973); WUHY-FM, 24 F.C.C. 2d 408 (1970).

^{20/} Capital Broadcasting v. Mitchell, 333 F. Supp. 582, 585-86 (D.C. 1971), aff'd., 405 U.S. 1000 (1972).

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the reliance on the broadcast message rather than the written word, and that Congress had intended to protect the young in banishing cigarette ads from the airways.

In view of this widespread recognition that children are not able to critically perceive advertisements and therefore may be misled by what they see in television commercials, the Council feels strongly that the broadcasters who carry such advertising have a public interest obligation not only to keep blatantly deceptive ads off the air, but also to present some programming to educate children about advertising. For instance, children should be made aware that an ad is trying to persuade him or her to do something--^{21/} that it is not entertainment or educational material.

They should be taught that the advertised products cost money, that some foods are only nutritionally sound when eaten as a supplement to a well-balanced diet, that sugared foods, regularly consumed, can cause tooth decay, and that

^{21/} Robertson's study has disclosed that children were more critical and skeptical about advertising once they realized the ads' persuasive intent. (See p. 4, n. 3, supra).

commercials employ symbolism to sell a product. These and many other similar topics of equal importance could be presented in a simple, understandable manner that need not destroy the system of commercial advertising for children, but will rather create an informed marketplace for such products.

Moreover, many parents may wonder where their children derive the desire for a food or toy. Other parents may be unaware of the long-term potential impact of advertisements on their children's values. Thus neither group can effectively deal with a child's demand for a product or teach the child how to perceive ads. For such parents, educational messages about children's advertising would also provide valuable information in the public interest. Rather than utilizing published materials or other devices to reach these children and their parents, advertising education would clearly be most effective on the medium which presents the ads themselves--a medium which has an enormous impact on ^{22/} America's children, and reaches their parents as well.

^{22/} It is estimated that a child who watches a moderate amount of television sees over 23 hours a week. See Charles Winick, Children's Television Commercials: A Content Analysis, p. 4 (1973) (a study supported by the Television Code Review Board and the NAB). By the time a child graduates from high school he or she has viewed over 15,000 hours of television, including 350,000 advertisements. See Robert Choate, Testimony before Consumer Subcommittee of the Senate Commerce Committee, March 7, 1974.

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CBS joins the other major networks in broadcasting literally hundreds of commercials aimed at children. However, the network has not lived up to its public interest obligations by failing to air any programming that would educate children in the ways described above, either in its children's programming formats, or even in adult-oriented programming at various times in the broadcast day. ^{23/}

4. Examples of the Need for Additional Information on Commercials Directed to Children, and Examples of Ways CBS Could Fulfill this Need and Obligation

The commercials broadcast over the CBS network and by its owned and operated station in New York employ objectionable advertising techniques in varying degrees. However, for the sake of clarity, the Council has selected three ads as illustrative of the pervasive techniques a child is not equipped to evaluate unassisted.

^{23/} CBS's one documentary, "You and the Commercial", aired last spring, dealt only very briefly with children's advertising. This program, while highly commendable, only shows the possibilities of the topic, and confirms the Council's view that the medium has the creative potential to inform people about advertising without putting them to sleep in the process.

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On a CBS children's Saturday special aired on December 8, 1973 there was a 30 second spot for Post Fruity and Cocoa Pebbles that featured two cartoon characters from the CBS program "The Flintstones": The dialogue in the ad went as follows: 24/

Child: Fred and Barney Pebbles for breakfast.

Barney: Let's go Fred. Cocoa Pebbles, Boy, oh boy!

Fred: Fruity Pebbles. Let me at 'em. Yummy orange, lemon and tangerine flavors.

Barney: Cocoa Pebbles are chocolatey good.

Fred: Have you looked in your Pebbles?

Child: A Flintstone Picture Pen.

Fred: A genuine ball point with either Fred, Barney or Dino on it.

Child: Writes terrific. Gonna take mine to school.

Fred: One in each specially marked box of Post Fruity or Cocoa Pebbles.

This ad makes use of the cartoon characters featured in a regularly scheduled CBS children's program in two

24/ The storyboard is attached as Attachment B.

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different ways: the cereal advertised, "Pebbles", is named after Fred Flintstone's daughter. Two other characters from "The Flintstones" program, Fred and Barney, are used to promote the product. Thus the product is associated with these television characters the child may know and like. ^{25/} Two of these characters endorse the product and implicitly urge the child to purchase and consume it. ^{26/} That product endorsement by a television character may be unfair to children is recognized by the NAB Television Code: there is a reason why Barbara Walters can sell NBC's audience a product on the "Today" show, while, at the same time of day, Captain Kangaroo cannot endorse a product for his child audience. Children are apt to blindly subscribe to what their TV heroes urge them to do and also may not recognize, because of their presence, that this is not part

^{25/} In a very real sense, the product advertisement is also a "promo" for "The Flintstones" program.

^{26/} This type of sales technique is frequently used in "adult" ads as well. But presumably an adult knows that Joe Namath is getting paid to endorse a certain brand of shaving cream and therefore would approach the ad with a certain degree of skepticism lacking in a young child.

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of an entertainment program. This principle is equally applicable to cartoon heroes as to live ones.

This "Pebbles" cereal advertisement is also objectionable because it minimizes the product's relationship to a balanced diet, another requirement of the NAB Code and its new Statement of Principles. The breakfast depicted consists solely of chocolate and fruit flavored cereal: there is inadequate visual or aural reference to a balanced diet.

Finally, almost half the ad is devoted to advertising the product on the basis of a premium inside--a ball point pen. The pen is also linked to Flintstone characters and spells out the name of the product in the course of demonstrating how well it writes. In short, the child viewer is urged to confine his breakfast to a "chocolatey" cereal named after a TV cartoon character by other cartoon characters with promises of a premium inside the box. The merits of the product--such as taste, food value, or price, either in absolute or comparative terms--are lost to the child behind this barrage of advertising techniques.

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Advertisements for toys often present some of the most unfair advertising practices when aimed at children. They can often mislead the child as to the nature of the toy and what it can and cannot do. Toy ads seldom mention how much the article or its related parts costs or what age groups it is designed for.^{27/} Regulations concerning what does or does not come with the toy are often circumvented with easily missed visual, rather than aural, messages about inclusion of batteries and the like. Conflicts between parents and children often stem from a child wanting a toy he or she has seen advertised on television. Parents likewise have no idea from the ad what the toy costs or whether it is suitable for their children.

Two advertisements broadcast over the CBS network and its New York owned and operated station illustrate the problem. The first is a commercial aired on August 25, 1973 at 9:25 AM during "Amazing Chan" for a "Remco Mimi Singing

^{27/} Since children are rarely apprised of the fact that an advertised product costs money, they may have little comprehension of our economic system. Commercials urge buying without conveying to the child what buying entails.

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Doll". The ad shows a child holding a doll that "sings". The audio implies (but never actually states), that the child is making the doll sing by triggering some mechanical device, but the visual portion of the ad never shows that the child makes the doll sing. It appears as though the toy sings ^{28/} automatically or by herself. Moreover, the message "batteries not included" is only presented visually, not aurally. Such a message is completely lost on younger children who cannot read at all, and may also be missed by older children who cannot read that quickly, or whose attention is focused on the toy depicted at the same time.

During the October 6, 1973 broadcast of "The Flintstones", CBS aired an ad for a "Dinah-Mite Beach House". ^{29/} While the ad does have several frames depicting the doll, Dinah-Mite, in relation to a child, several other frames make the doll seem life-size. At the least a child might be confused as to how big the doll is and what it is able to do.

^{28/} See attached storyboard. (Attachment C).

^{29/} See attached storyboard. (Attachment D).

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Many other CBS-aired ads could be cited as illustrative of advertising techniques that could be unfair ^{30/} when aimed at children--such as ads which say, in effect, that if you don't eat at Burger Chef's you're no fun, that chewing Dentyne is tantamount to brushing your teeth, or that Milky Way candy bars won't spoil your appetite. None of these ads, and no other CBS programming, give the child the perceptive tools to enable him or her to realistically or intelligently evaluate such commercials and the products they push.

The Council's criticism of CBS's failure to, in effect, "balance" its children's advertising with programs designed to educate and assist children and their parents

^{30/} F.T.C. Chairman Engman expounded on this notion of unfairness in his dissent to the F.T.C.'s dismissal of unfairness charges in the "Wonder Bread" case

. . . the advertiser who chooses a child audience as the target group for his selling message is subject to not only standards of truthful advertising; he is, in my judgment, also bound to deal in complete fairness with his young viewers. In my opinion, advertising directed to or seen by children which is calculated to, or in effect does, exploit their known anxieties or capitalize upon their propensity to confuse reality and fantasy is unfair. . . ." In the Matter of ITT Continental Baking Co., Inc., FTC Dkt. 8860, Final Order of October 19, 1973.

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in their perception of commercials is not farfetched or unreasonable. One of the major networks, NBC, has already taken steps to present this kind of programming. In the fall of 1973, an entire week of NBC's daytime public affairs program, "Not For Women Only" was devoted to a discussion of children's television and advertising. Spokespersons from advertising, the broadcast industry, children's television production, and Action for Children's Television were among those represented. The discussion included children's advertising and its impact.

In conjunction with the Council of Better Business Bureaus, NBC has developed six spot messages entitled "Junior Consumer Tips". These public service announcements, which make use of the Ritts puppets, deal with such subjects as nutrition, cost, purchasing decisions, and saving money. The spots have been and will be aired during NBC programs aimed at a child audience. Moreover, these six spots were recently aired and discussed on the NBC "Today" show, allowing parents to increase their awareness of the problem and potential solutions.

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In sum, NBC seems to have recognized its basic public interest obligations in this area and has taken some initial, if tentative, steps to provide programming aimed at children and their parents that will prove educational on advertising matters. The Council has applauded NBC's recognition of this obligation, although it has reminded NBC that the public interest standard requires a continuing, concentrated effort to meet such important audience needs. So far as we can tell from CBS's response to our May 7 letter, or any subsequent acts, however, CBS has neither recognized this obligation nor programmed to fulfill it.

* * * * *

CBS devotes many hours of a week to programming designed for children and it reaps profits from advertisers who sponsor these programs. ^{31/} Because it is the vehicle by which millions of children are exposed to television

^{31/} Over \$200,000,000 a year is spent by children's television advertisers. It is estimated that children influence their parents to purchase \$1.5 billion in produce alone each year.

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advertising, CBS has an obligation to insure that this audience's welfare is not sacrificed to the profit motive. Ideally, perhaps, ACT is correct and children's programming should contain no advertisements. But given the present fact of advertising on children's programs and the probability that such advertising will continue, the Council believes that CBS has an obligation at minimum to teach children how to deal with commercials and to inform their parents of the controversy over this type of advertising.

The Council therefore calls upon CBS to immediately begin the planning and production of programming, of its own choice, whether it be in the form of entertainment, panel discussion, documentaries, news coverage or public service announcements, that will provide its young viewers and their parents with sorely needed educational material on children's advertising. The Council would be pleased to assist CBS in these efforts.

If CBS is reluctant to fulfill its clear-cut obligation in this area, the Council is prepared to carry

Mr. Taylor
Page 34
March 21, 1974

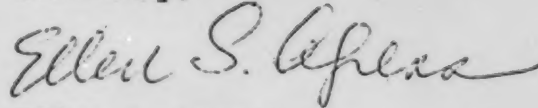
this issue to the Federal Communications Commission, which, we believe, would prove receptive to this argument, given its past treatment of children's television as a potentially unique public interest area of regulation and its continuing interest in this area. The Council is hopeful it will not be necessary to resort to Commission processes. Both the Council and CBS are fully aware of the potential for procedural delay in this course. Meanwhile, the objects of CBS's public trustee responsibilities--the children to which this advertising is directed--would continue to be exposed to urgings to consume without concomitant data about informed consumer choices. Too much time has already elapsed since the Council's May 7, 1973 letter, and CBS's unresponsive reply.

We are confident that CBS, independently, or, if it desires, with the Council's assistance, will begin fulfilling these public interest responsibilities without further prodding from the government or the public. We

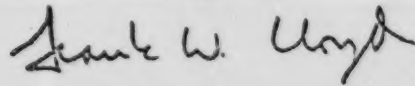
Mr. Taylor
Page 35
March 21, 1974

trust you will let us know in the near future what steps
you plan to take to fulfill your obligations as outlined
in this letter.

Sincerely,



Ellen S. Agress



Frank W. Lloyd

cc: All Commissioners
Federal Communications Commission

William Ray, Chief, Complaints
and Compliance, F.C.C.

Senator John Pastore
Senator Howard Baker
Representative Torbert MacDonald
Ralph E. Goldberg, Esq.

ATTACHMENT A

The following list is by no means exhaustive:

ADMINISTRATIVE AND CONGRESSIONAL HEARINGS:

F.C.C. Hearings:

"In the Matter of Children's Television Programming,"
October 2, 3, 4, 1972; January 8, 9, 10, 1973;

F.T.C. Hearings:

"Public Hearings on Modern Advertising Practices," October-
November 1971;

Informal discussions with and proposals from consumer groups,
Fall, 1973.

Congressional Hearings:

Consumer Subcommittee, Senate Committee on Commerce, "Nutri-
tional Content and Advertising for Dry Breakfast Cereals,"
92nd Congress;

Consumer Subcommittee, Senate Committee on Commerce, "Hearings
on Proposed Bill to Establish National Institute of Marketing
and Health," February 26 and 27, 1973, 93rd Congress;

Senate Select Committee on Nutrition and Human Needs, Hearings
on Nutrition and Breakfast Cereals, 93rd Congress, March 5, 6,
7 and 12, 1973;

Consumer Subcommittee, Senate Committee on Commerce, "F.T.C.
Oversight Hearings," March 7, 1974;

Senate and House Appropriations Subcommittees, March 8, 12,
1974.

PUBLIC STUDIES:

Howard, John A. and James Hulbert, "Advertising and the Public
Interest," A Staff Report to the F.T.C., February 7, 1973;

Pearce, Alan, "The Economics of Network Children's TV Pro-
gramming," done for the F.C.C.;

Ward, Scott, "Effects of Television Advertising on Children and Adolescents," supported by National Institute for Mental Health, contract # HSM-42-70-74, June 1971.

PRIVATE STUDIES:

ACT Sponsored Studies:

F. Earle Barcus, "Saturday Children's TV," 1971;

F. Earle Barcus, "Romper Room: An Analysis," 1971;

Melody, William, "Children's Television: Economics and Public Policy," grant from John and Mary Markle Foundation, December 1972;

NEWSPAPERS AND PERIODICALS (representative examples):

"Ads and Children," Washington Post, November 11, 1971;

"TV Advertising and Children," Washington Post, November 9, 1971;

"Children's TV Ad Ban Asked on Vitamins," St. Paul (Minn.) Dispatch, November 10, 1971;

"Inside the FCC," Television/Radio Age, September 4, 1972;

"Children's TV: Ethics and Economics," America, October 21, 1972;

"Children's TV Hearing: 'Very Mixed Bag'," Washington Post, October 5, 1972;

"FCC Ends Panel Talks on Ads to Kids; Feels More Study is Needed," Advertising Age, October 9, 1972.

"No F.C.C. Action in Sight on Child TV," New York Times, October 9, 1972;

"Networks Oppose End of Children's Ads," New York Times, January 12, 1973;

"Lukewarm Support for Ad-Free Children's TV," Washington Post, January 10, 1973;

"TV Ads Aimed at Children," Washington Post, January 9, 1973;

"F.T.C. Urged to Curb TV Ads by Candy and Cereal Makers," New York Times, March 7, 1973;

"ACTing Against TV Ads," Washington Post, March 7, 1973;

"Breakfast Cereal Manufacturers Defend Use of Sugar," New York Times, March 13, 1973;

"The Sugar in Cereals," Washington Post, March 13, 1973;

"Advertising: TV and Its Impact," New York Times, February 28, 1973;

"Advertising: Motivating Children," New York Times, February 28, 1973;

"Brand X Secret; Television: How to Get a Child To Buy," Washington Post, February 27, 1973;

"NAB Stakes Out Straight Line Children's Ads Must Follow," Broadcasting, June 11, 1973;

"What is TV Selling My Kids?" Chicago Daily News, June 15, 1973;

"Yes Kid-Vid Is As Bad As That", Washington Star News, October 30, 1973

"Proposals for Kid TV Guides Readied by Choate Group," Advertising Age, December 3, 1973;

"Children's TV Still Debated After 20 Years," Washington Post, December 18, 1973;

"Ads Aimed At Children," Washington Post, March 8, 1974;

"Scrutinizing Kiddie TV Advertising," Washington Post, March 15, 1974.

Radio TV Reports

41 East 42nd Street New York N.Y. 10017
(212) 697-5100

PROGRAM:

SPECIAL

12/8/73

30 SEC.

WCBS-TV

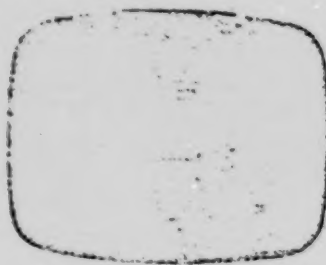
(NEW YORK)

12:02 PM

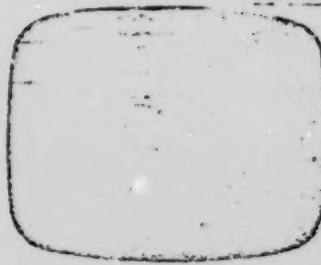
ATTACHMENT D



1. CHILD: Fred and Barney.



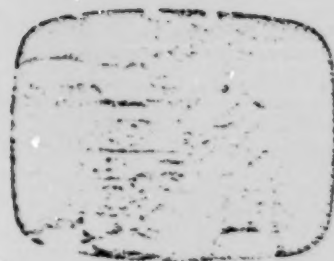
2. CHILD: Pebbles for breakfast.



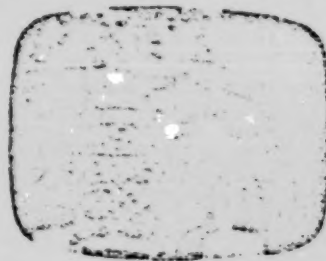
3. BARNEY: Let's go Fred. Cocoa Pebbles. Boy, oh boy!



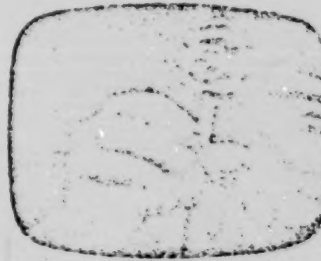
4. FRED: Fruity Pebbles. Let me at 'em. Yummy orange, lemon and tangerine flavors.



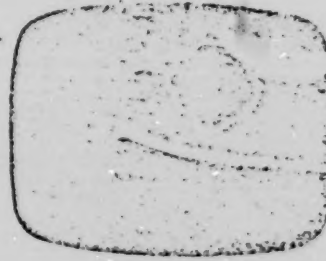
5. BARNEY: Cocoa Pebbles are chocolatey good. FRED: Have you looked in your Pebbles?



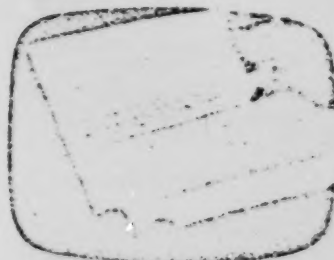
6. CHILD: A Flintstone Picture Pen.



7. FRED: A genuine ballpoint



8. with either Fred, Barney or Dino on it.



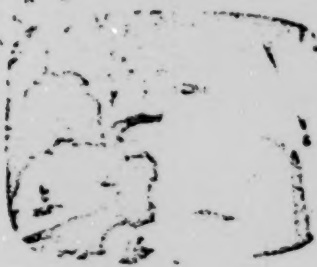
9. CHILD: Writes terrific. Gonna take mine to school.



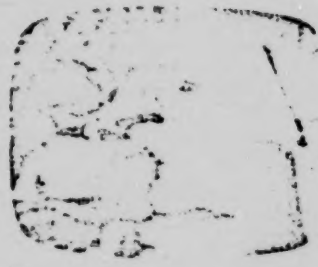
10. FRED: One in each specially marked box of Post Fruity or Cocoa Pebbles.

BEST COPY AVAILABLE

ATTACHMENT C



1. GIRL: Hi Mimi.



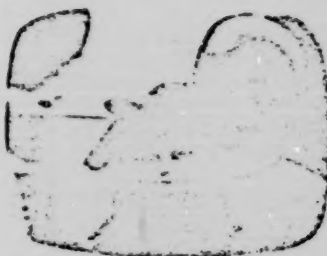
2. DOLL SINGS: I'd like to teach the world to sing---



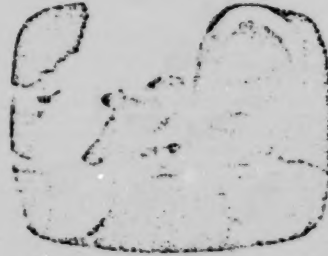
3. GIRL: Who's singing?



4. DOLL SINGS: in perfect harmony.



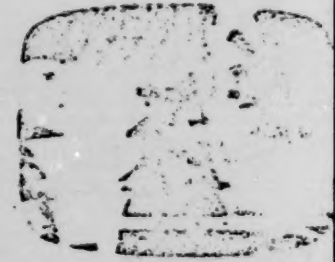
5. GIRL: It's my doll Mimi. Isn't she beautiful?



6. GIRL: Can you make Mini sing for me?
GIRL: Sure!



7. DOLL SINGS: I'd like to



8. DOLL AND GIRLS SING: teach the world to sing in perfect harmony. I'd like to hold it in my arms....



9. ANNCR: Mimi, she's a new doll that you can make sing for you and with you.



10. Mimi comes with four records and song book. From Remco.

BEST COPY AVAILABLE

Radio TV Reports

PRODUCT:
PROGRAM:

DINAH-MITE BEACH HOUSE

FLINTSTONE:

10/6/73

WCBS-TV

(NEW YORK)

736108

30 SEC.

8:10 AM

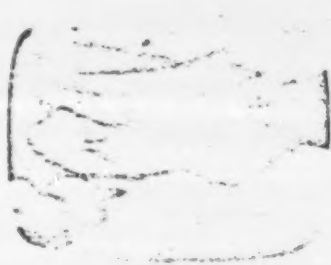
41 East 42nd Street New York N.Y. 10017

(212) 697-5100

ATTACHMENT D



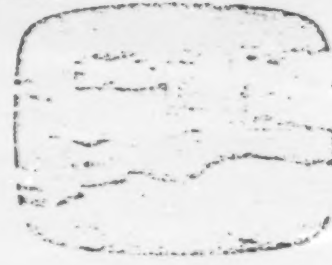
1. CHORUS SING: It's a pretty beach house



2. and it's just right for my pretty little doll.



3. She's Dinah-mite.



4. You can play with her house.



5. You can play with her pool. There's so much to do, it's really cool



6. ANNCR: You can have such fun with Dinah-mite and her beach house. It comes complete with furniture, rope, ladder and even a hammer. A nice place for fun.



7. Dinah-mite Beach House.



8. Complete with inflatable pool, raft and beachball.



9. And Dinah-mite too.

BEST COPY AVAILABLE

CBS

Columbia Broadcasting System, Inc.
51 West 52 Street
New York, New York 10019
(212) 765-4321

Ralph S. Goluberg
General Attorney

EXHIBIT D

RECEIVED MAY 28 1974

Dear Ms. Agress and Mr. Lloyd:

May 24, 1974

On April 11, 1974, we advised you by letter that CBS would give careful consideration to your March 21, 1974 letter to Mr. Arthur R. Taylor, President of CBS, on behalf of the Council on Children, Media & Merchandising ("Council"). In that letter, the Council contends that CBS has violated its fairness doctrine obligations and has ignored its public interest responsibilities to young viewers. This charge is grounded upon your assertion that CBS incurs legal obligations as a result of the "commercials which are aired by [CBS'] owned or operated stations during network programs that are specifically designed for an audience under 12 years of age."

At the outset, we would like to emphasize that CBS accepts its responsibilities to young viewers with the utmost seriousness. Contrary to the assertions made in your letter, we believe that CBS is meeting its legal and public interest responsibilities to children -- both in its programming service and in its commercial acceptance policies. Moreover, we are proud of the program service provided by CBS to young viewers -- a program service made possible by the commercials you find so objectionable. We cannot agree with the Council that the presentation of children's television advertising "implicitly" presents one side of a controversial issue of public importance. We cannot agree that CBS has failed to meet its fairness responsibilities. And we cannot agree that in the presentation of commercials and programming CBS has failed to meet its public interest obligations.

As we demonstrate in this letter, it is our belief that CBS has fulfilled these responsibilities by providing consumer information to children and their parents in its news and informational programming; in the care with which commercials submitted for broadcast are reviewed; and in our overall programming for children, including public service announcements.

May 24, 1974

Essentially, the Council now makes two assertions*:

- I. That CBS has failed to meet its fairness doctrine obligations, first by airing commercials that implicitly present one side of the "controversial issue" of children's television advertising, without airing contrasting viewpoints on that issue or consumer information directed to children or to their parents, and second, by not covering these issues in its news and other programming; and
- II. That even if the fairness doctrine were held not to apply generally to product commercials, CBS has failed to meet its "fundamental public interest obligations" to take account of the unique needs of children as a special audience, and to provide programs, public service announcements or counter-commercials to meet their needs.

The Council's letter is ultimately based upon the assumption -- false, we believe -- that commercials are unfair to children and thus create certain legal obligations on the part of CBS and other broadcasters. Although you do not argue explicitly that children's advertisements should be eliminated, you suggest that such advertisements in and of themselves are harmful to children -- transmitting messages that must be countered by the presentation of contrasting information.

CBS rejects the Council's unsupported suggestion that advertising is injurious to children or gives rise to some sort of counter-advertising or programming requirement. There is, of course, no judicial, Congressional, or administrative finding to support the Council's position; nor, indeed, is there any empirical evidence to buttress the Council's assertion.

As you acknowledge by disassociating the Council's request from the demands of Action for Children's Television ("ACT") for the elimination of commercials, American television is dependent upon advertising support -- a fact repeatedly recognized by the FCC. In initiating its broad fairness inquiry, for example, the Commission noted "...that, to a major

* On July 6, 1973, CBS responded to the Council's complaint letter of May 7, 1973, concerning children's advertising and programming.

May 24, 1974

extent, ours is a commercially-based broadcast system and that this system renders a vital service to the nation." (Notice of Inquiry, Docket No. 19260, FCC 71-623, June 11, 1971.) Within this framework, advertisers underwrite these programs by buying time for commercial announcements. Such revenues enable the CBS Television Network and the CBS Owned television stations to present a wide variety of significant and superior children's programming within a framework of responsible commercial broadcasting.

Before addressing the specific issues posed by the Council's letter, we believe that the Council's arguments should be set in appropriate legal perspective. The very issues you raise are now the subject of consideration by the Federal Communications Commission in two important proceedings.*

In the children's television docket, as you are aware, the FCC is studying issues raised by a petition of ACT for the elimination of commercial sponsorship in children's programming and for other changes in children's television (Docket No. 19142, Notice of Inquiry and Notice of Proposed Rule Making, released January 26, 1971). In this proceeding the Commission has opened up a broad study into television programming available for children, along with advertising content and methods of presentation. In addition, the counter-advertising remedies you propose and the fairness issues you raise are now before the FCC in Docket No. 19260. Central to the fairness doctrine proceeding is the question of what obligations, if any, are incurred by the broadcast media as a result of presenting product commercials. In decisions and in its Notice of Inquiry, released June 11, 1971, the Commission has repeatedly stressed the necessity for a broad overview of the policy issues involved. We continue to believe, as we stated in answer to the Council's fairness complaint of May 7, 1973: "At the very time that these matters are being extensively examined before the Commission, it is, in our view, most inappropriate to attempt to resolve them in the context of a limited fairness doctrine complaint." (CBS' letter of July 6, 1973).

* Docket No. 19142, In the Matter of Petition of Action for Children's Television (ACT) for Rule Making Looking Toward the Elimination of Sponsorship and Commercial Content in Children's Programming and the Establishment of a Weekly Fourteen-Hour Quota of Children's Television Programs; Docket No. 19260, In the Matter of the Handling of Public Issues Under the Fairness Doctrine and Public Interest Standards of the Communications Act.

May 24, 1974

1. The broadcast of commercial announcements to children does not raise fairness obligations.

The first argument made by the Council for "counter-programming" is based upon the assertion that the mere broadcast of advertisements in children's programming "constitutes an implicit position on the issue of whether children should be exposed to advertising on television." We find no legal support for this position.

Within a system of commercial broadcasting, broadcasting a commercial does not per se raise fairness doctrine obligations. The FCC has never ruled otherwise.* The CBS Television Network has, on many occasions, refused to broadcast certain commercials because, in its view, they expressed a controversial position on a public issue. But we flatly reject the argument that a controversial viewpoint is expressed whenever a product commercial is broadcast during a weekend children's program.

The Commission has, in effect, implicitly rejected this argument in a situation where the FTC had announced its intention to issue a complaint alleging that certain toy commercials contained deceptive advertising (Letter to Earle K. Moore, Action for Children's Television, Inc., FCC 71-1097, October 26, 1971). The complainant argued that "when licensees present commercials they are in fact stating the belief that advertisements are honest and that the licensees have an obligation to present the other side of the issue." In rejecting the complaint, the Commission stated:

* As you note, the courts have in three cases recognized that certain advertisements may raise controversial issues: Friends of the Earth v. F.C.C., 449 F. 2d 1164 (D.C. Cir. 1971); Retail Store Employees Union v. F.C.C., 436 F. 2d 248 (D.C. Cir. 1970); Applicability of the Fairness Doctrine to Cigarette Advertising, 9 F.C.C. 2d 921 (1967) (hereinafter "Cigarette Advertising"), aff'd sub. nom. Banzhaf v. F.C.C. 405 F. 2d 1082 (D.C. Cir. 1968), cert. denied, 396 U.S. 842 (1969). Indeed, it was a proliferation of claimants raising fairness doctrine issues as a result of product and service advertisements that in part prompted the FCC to institute its fairness docket (No. 19260).

May 24, 1974

"As to the specific advertisements which you cite, we leave to the FTC the decision as to whether they are false or misleading. However, for the reasons developed in the Chevron decision [29 FCC 2d 807 (1971)], pp. 810, 812, we do not find that these advertisements involve controversial issues of public importance or that fairness obligations are raised."

The Commission also called attention to the two dockets discussed above, advising the complainant that "therefore, the basic and important questions raised by your complaint will be given further consideration in these extended and overall inquiries."

A reexamination of the three Court of Appeals cases cited in your letter indicates the inappropriateness of applying the fairness doctrine to all weekend morning commercials broadcast during children's programming. This advertising bears no similarity to the unique circumstances in the three cases you cite, as the following review indicates.

a. The Banzhaf case

In Banzhaf, supra, the Court of Appeals held that licensees carrying cigarette advertising should be required to devote broadcast time to presenting the case against cigarette smoking. In holding that cigarette advertising per se conveyed the controversial view that smoking is desirable, both the Commission and Court considered this ruling "unique" (Cigarette Advertising, supra, 9 F.C.C. 2d at 943; Banzhaf, supra, 405 F. 2d at 1097, n. 63). It was seen as a "public health measure addressed to a unique danger authenticated by official and congressional action." (405 F. 2d at 1099). In summarizing the Commission's holding, the Court repeated:

"...The ruling is really a simple and practical one, required by the public interest. The licensee who has a duty 'to operate in the public interest' * * * is presenting commercials urging the consumption of a product whose normal use has been found by the Congress and the Government to represent a serious potential hazard to public health...." (Emphasis added.)

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(Cigarette Advertising, 9 F.C.C. 2d at 949, cited at 405 F. 2d at 1092-93).

The ruling in Banzhaf cannot be separated from the product involved and the fact that the health hazard to the consumer was, to quote the Court, "a danger inherent in the normal use of the product...[and] documented by a compelling cumulation of statistical evidence." (405 F. 2d at 1097). Indeed, the Court in Banzhaf counseled against misuse of its decision:

"But we emphasize that our cautious approval of this particular decision does not license the Commission to scan the airwaves for offensive material with no more discriminating lens than the 'public interest' or even the 'public health.'" (405 F. 2d at 1099).

b. Friends of the Earth

In Friends of the Earth, the Court of Appeals found that specific advertisements before the Court for large engine cars and leaded gasoline, broadcast by a New York television station, presented a position on the controversial issue of air pollution, a serious local problem. As stated by the Court:

"When there is undisputed evidence, as there is here, that the hazards to health implicit in air pollution are enlarged and aggravated by such products, then the parallel with cigarette advertising is exact and the relevance of Banzhaf inescapable." (449 F. 2d at 1169).

The Commission itself has recently distinguished Friends of the Earth as applying only to the specific advertisements in question, and it has refused to apply this holding to other commercials for automobiles and gasoline. In a Letter to Mr. John R. Phillips, Center For Law In The Public Interest, dated March 13, 1974, the FCC staff denied complaints against KNXT and another Los Angeles television station, which alleged that by broadcasting a large number of automobile and gasoline advertisements, the licensees had incurred fairness doctrine obligations relating to the issue of air pollution. The complainants relied on Friends of the Earth, but the FCC staff stated:

May 24, 1974

"As the Commission stated in its Interim Memorandum Opinion and Order on Remand, 33 FCC 2d 648 (1972): '...we read the opinion of the Court [of] Appeals as holding that while there is an overall problem of pollution caused by the use of automobiles it is the advertising of large engine cars (and leaded gasolines) typified by the particular commercial announcements relied upon by Friends of the Earth which present a point of view which is both controversial and involves an issue of public importance.' Id. at 651. You have not shown that any such advertisements are at issue here, and therefore your reliance on Friends of the Earth appears inapposite." (Letter at page 4).

c. Retail Store Employees Union

The third case, Retail Store Employees Union, concerned radio advertisements for a department store, which was involved in a labor dispute with an employees' union. The union, which had embarked on a strike and boycott to gain its objectives, sought to purchase spot time to urge listeners not to cross its picket lines. The Court found that by urging listeners to patronize the department store during the labor dispute, the store's advertisements suggested that the public should not boycott its premises and thus expressed one side of a controversial local issue (436 F. 2d at 258).

In sum, we find no legal basis for analogizing from these cases to all advertising directed to children. Moreover, if the broadcast of every such commercial were found implicitly to argue a position on a controversial issue of public importance, the result would almost certainly be to eliminate a substantial number of commercials from the air. As the Commission has observed:

"Such a ruling would likely create an administrative nightmare for this agency as well as its licensees, and could have disastrous economic consequences for our entire commercial system. At the present time, we are conducting an over-all review of the Fairness Doctrine (Docket No. 19260). This study includes a detailed analysis of the merits of various 'counter-advertising' proposals, including suggestions similar to those advanced by

May 24, 1974

the Petitioners in this case. At the end of this study, we hope to be in a position to balance more intelligently likely gains to public enlightenment against the threats these gains may present to the economic base and sound administration of the commercial broadcasting system. In the meantime, we are convinced that our present policy is the one best designed to further '* * * the larger and more effective use of radio in the public interest.' 47 U.S.C. §303(g)." (Alan F. Neckritz, and Lawrence B. Ordower, 37 F.C.C. 2d 528, 532 [1972]).

Pending any revision of the fairness doctrine in Docket No. 19260, the Commission's ruling that product advertisements do not per se raise fairness issues is controlling. (Letter to John R. Phillips, supra; Letter to Earle K. Moore, supra.)

2. CBS has in its overall programming presented contrasting views on issues relating to children's advertising.

The second aspect of your fairness complaint is that CBS has violated its fairness obligations by not giving sufficient coverage to issues relating to children's advertising. You have defined this issue by pointing to specific events and particular aspects of commercials (some of which have been reported in the press) that you believe require coverage under "traditional precepts" of the fairness doctrine.

We believe that the Council's definition of the issues is arbitrary and that, contrary to its assertion, the news and public affairs broadcasts on the CBS Television Network and the CBS Owned stations have included extensive material on the advertising techniques and products in children's commercials, as the examples in this and the following section of our letter demonstrate.

The Council apparently questions the material selected by hundreds of CBS journalists in their presentation of news and public affairs to the American public. But unless

May 24, 1974

we are to make the Government the ultimate arbiter of newsworthiness -- a role consistently rejected by the Commission -- we must accept the risks of "imperfect" but bona fide judgments by professional journalists. This, at least, is the philosophy that leads CBS to lodge journalistic decisions in its news professionals -- and to support these good faith decisions when they are subjected to scrutiny by the Government.

By measuring CBS' performance against a chronology of events which you claim have received less news coverage than you believe appropriate, you assert that CBS has in some way not met its legal obligations. Yet it was this very recognition that journalists cannot automatically mirror the concerns of every group, but rather must make their own independent editorial decisions, that led the Chief Justice to write in Columbia Broadcasting System, Inc. v. Democratic National Committee:

"...[Not] every potential speaker is 'the best judge' of what the listening public ought to hear or indeed the best judge of the merits of his or her views. All journalistic tradition and experience is to the contrary. For better or worse, editing is what editors are for; and editing is selection and choice of material.... In the delicate balancing historically followed in the regulation of broadcasting Congress and the Commission could appropriately conclude that the allocation of journalistic priorities should be concentrated in the licensee rather than diffused among many." (36 L. Ed. 2d 772, 796 [1973]).

In the exercise of its journalistic judgment, CBS presented the one-hour broadcast CBS REPORTS: "You and the Commercial" (April 26, 1973, 10:00 - 11:00 PM EST) -- a broadcast inexplicably relegated to two footnotes in your letter.*

* While the Council's dissatisfaction with this documentary has been noted (Newsweek, May 7, 1973), other commentators recognized the considerable achievements of this "most unusual documentary" (New York Post, April 26, 1973). John J. O'Connor devoted his April 26 column in The New York Times to this documentary, beginning his lead paragraph as follows:

"Tonight at 10 CBS News, in a gesture rare for

May 24, 1974

The very broadcast of this documentary should negate any thoughts the Council has apparently harbored that CBS' financial interests have prevented it from broadcasting material contrary to its advertisers' interests (see your May 7, 1973 letter and CBS' July 6 reply). Indeed, "You and the Commercial" included much informative material that the Council states it would like to see broadcast to parents "about the sophistication of techniques used to solicit their child, the impact and effect advertisements may have on their children's value [and] the controversy surrounding children's advertising."

Viewers of "You and the Commercial" witnessed an in-depth report on how advertising may influence them. The broadcast interspersed film clips from 150 commercials -- including cereals, sodas, children's shoes and toys -- with demonstrations, facts and critical commentary, designed to show the techniques used by advertisers to sell products to audiences, old and young. In our view, no one who saw this broadcast could fail to understand better what actually happens in a commercial, from a technical and creative point of view.

A significant portion of the documentary dealt with advertising directed to children. In the course of the broadcast, CBS' audience was presented with a number of facts about children's viewing habits and about the commercials they view. An early segment showed how a test group of 9-11 year olds are observed from behind a one-way mirror and tested on their

(Footnote continued)

commercial television, rather lustily bites the hand that feeds it."

O'Connor recognized that "the program touches on most aspects of the commercial, from regulation by the Federal Trade Commission and the networks themselves to the implications of corrective and counteradvertising." He particularly noted the final segment ("the most provocative"), an interview with Dr. Erich Fromm, in which this well-known psychologist discussed the social ramifications of commercials.

Kay Gardella of The New York Daily News, called the hour "worthwhile," "hard-hitting, forthright and often amusing," and said that it "should be viewed by everyone." While not so viewed, it was seen by many -- an estimated audience of 10 million people, including 500,000 children and 800,000 teenagers, according to the CBS Television Network Research Department.

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reactions to a commercial. Other segments of the broadcast pointed out deceptive and misleading techniques that had been used in commercials directed to children. In this connection, Charles Kuralt described the concern of the FTC "with the impact of advertising, especially on children"; and Producer Irv Drasnin interviewed Robert Pitofsky, former Director of the FTC's Bureau of Consumer Protection, about the Wonder Bread case.

Viewers of the CBS EVENING NEWS WITH WALTER CRONKITE would already have learned about the FTC's charges against the makers of Wonder Bread on our October 22, 1971 broadcast.* On the CBS MORNING NEWS WITH JOHN HART, CBS News presented a report on Professor F. Earle Barcus' study of commercialism in "Romper Room," with a concluding statement by Evelyn Sarson of ACT (December 30, 1971). CBS News also gave its viewers a view into the testimony of an 11-year old school girl, Dawn Kurth, who appeared before the Senate Commerce Subcommittee to discuss her own study of the effects of television commercials (CBS EVENING NEWS, May 31, 1972; CBS MORNING NEWS [interview], June 1, 1972). The CBS Owned stations also found Miss Kurth's criticisms newsworthy (e.g., KNXT BIG NEWS [6-7 PM], May 31, 1972; WBBM-TV NOON NEWS, June 1, 1972). On March 5, 1973, the CBS MORNING NEWS reminded its viewers that Senator McGovern's Nutrition Committee was investigating television commercials for children.

Of particular note is a half-hour interview broadcast by KMOX-TV in March 1974. The interviewee was Mary M. Phelan, President of the St. Louis Chapter of ACT, who criticized children's television and advocated the elimination of all commercials in children's programming (NEWSMAKERS, March 30 [repeated March 31], 1974). Other illustrative news coverage by the CBS Owned stations relating to the controversy over children's advertising includes a report on KNXT of ACT's charges that television reinforces bad eating habits (BIG NEWS, March 6, 1973); and reports on WCBS-TV on consumer pressure to ban sugared cereal from the market (6 O'CLOCK REPORT, September 14, 1973), on Wonder Bread (11 O'CLOCK REPORT, November 5, 1973), and on a protest by women against "junk foods" (6 O'CLOCK REPORT, November 17, 1973).

* As you acknowledge, the Wonder Bread decision was covered on November 5, 1973.

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A new format that has already begun to show potential for conveying relevant information is MAGAZINE (a new series of CBS News Daytime Specials of particular interest to women). Thus, on May 2, 1974, CBS News Correspondent Sylvia Chase offered suggestions on how to withstand the marketing techniques by which supermarkets encourage buying. During the broadcast she explained how products appealing to children are placed on low shelves to be within easy reach.

We believe that CBS has acted fairly and reasonably in covering these issues: In the broadcast of "You and the Commercial" and in its various national and local news reports, CBS has presented diverse views and information relating to children's advertising.

3. In its programming and in its commercial policies, CBS fulfills its public interest responsibilities to children.

In the second half of your letter, you claim that CBS has failed to meet its "public interest" obligations in the presentation of commercials and programming. In our view, there is no factual basis for this claim.

a. CBS Television Network Programming

The Council's conclusion, set forth at the outset of your letter -- that "the condition of children's television on CBS has not significantly improved to date" -- is, in our view, unwarranted.

First and foremost, CBS believes that it meets its public interest obligations to children by providing a rich variety of quality programming specifically designed for young viewers -- not only on weekend mornings, but throughout the week, when children tend to do most of their

television viewing.*

As you may be aware, of all the television viewing by children 2 to 11 years of age, less than 10 percent is on Saturday mornings. According to the A.E. Nielson Company's data for November 1973, the average child spends 2.19 hours, or 8.6 percent of his total viewing, on Saturday morning.** Although ACT and others continually refer to Saturday morning as children's "prime time," the major portion of the average child's viewing time is between 5 PM and 7:30 PM weekdays, even though the percentage of children in the total audience may be smaller. Thus, the most recent Nielson survey indicates that of 17,370,000 viewers who saw an average minute of the CBS EVENING NEWS WITH WALTER CRONKITE, 1,760,000 of these were children 2 to 11. Obviously, then, children do receive relevant information from national and local news broadcasts presented during this period. Children, of course, also watch television after school and after 7:30 PM.

Since we recognize that the Council has long been concerned with children's television, we assume it is aware of the entertainment and informational programming developed by CBS to meet the diverse needs and interests of a young audience. We at CBS are, of course, continually seeking to improve this programming -- both in the selection and in the development of programs.***

* In addition to the CBS Television Network's programming for children, the five CBS Owned television stations also produce regular series and special programs for children in a wide variety of formats.

** "Saturday morning" is defined by Nielsen as 7 AM to 1 PM in the Eastern and Pacific Time Zones and 6 AM to Noon in the Central Time Zone.

*** But "newness" is not a prerequisite to quality: One of CBS' best children's programs is, in fact, our oldest running one. CAPTAIN KANGAROO, now in its 18th year, has been a model for programming directed to preschool age children. (Today it is an important component for "Home Start," a home-oriented educational program in rural areas funded by HEW's Office of Education.)

The CBS Television Network approaches its responsibilities in this area with a two-fold philosophy: first, to provide entertainment and educational programming that supplements children's classroom experience by taking into account the nature of the medium, i.e., what television can do best; and second, to make judicious use of a successful program schedule to maximize the audience for programs that incorporate material of educational value for children.

In each of the past three seasons, CBS has taken positive steps consistent with these philosophical goals. Thus, for example, in 1971-72 the CBS CHILDREN'S FILM FESTIVAL was introduced on a regularly-scheduled basis. In keeping with the second principle the Network presents this program last on the children's schedule, thereby obtaining audiences far in excess of what it otherwise might receive.

In the 1972-73 season, CBS News began production of IN THE NEWS. Developed out of IN THE KNOW, a 1971 series of brief informational programs for children, IN THE NEWS is an innovative series of two-minute mini-documentaries for weekend presentation. Nine IN THE NEWS broadcasts are now shown at different times each Saturday and two on Sunday. In the 1974-75 season, IN THE NEWS will be presented 10 times on Saturday and twice on Sunday. The creative scheduling of this series was designed to maximize the audience for this kind of content.*

Two years ago CBS News produced WHAT'S A CONVENTION ALL ABOUT? which grew into WHAT'S IT ALL ABOUT? -- a series of preemptive Saturday broadcasts, designed to explain to children significant events and topics, such as the Energy Crisis. The CBS Television Network now presents one of these specials approximately every other month. The newest CBS News contribution to the CBS Television Network's family schedule is AMERICAN PARADE -- a three-year series of special presentations on American History in honor of the Bicentennial.** In addition,

* In fact, with an average audience of 5.1 million young children and 1.4 million teenagers, IN THE NEWS on Saturdays may well be the most widely shared learning experience among our nation's children.

** AMERICAN PARADE has been endorsed and praised by a number of organizations concerned with education, including the National Congress of Parents and Teachers and the National Education Association.

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beginning July 4, 1974, the Network will broadcast BICENTENNIAL MINUTES, another innovative salute to the nation's 200th birthday celebration. This series consists of 731 one-minute programs reflecting events in American history. Next year CBS News expects to provide the CBS Television Network with three half-hour broadcasts using the 60 MINUTES format, to be aired in prime time especially for youngsters. In the 1974-75 season, family specials aimed at the younger audience will be presented on seven out of every eight Saturdays, from 7:30 PM to 8 PM.

This season the CBS Television Network decided to match WHAT'S IT ALL ABOUT? with a series of cultural specials for children. Under the umbrella title of the CBS FESTIVAL OF LIVELY ARTS FOR YOUNG PEOPLE, CBS has to date presented five highly acclaimed productions: THE RETURN OF THE PHOENIX, H.M.S. PINAFORE, A CHILD'S CHRISTMAS IN WALES, TODAY IS OURS (based on Ruby Dee's Glowchild), and the ballet HARLEQUIN.

In the 1972-73 season, the CBS Television Network launched an exceptional experiment in providing children with pro-social messages in a highly entertaining program format. FAT ALBERT AND THE COSBY KIDS, created and developed with the cooperation of a panel of 11 distinguished scholars and educators, deals with specific and very real problems which affect all children at one time or another -- lying, playing hooky, cheating, ganging up, frustrations, anger and tattling. The panel members advise on each broadcast from the initial story concept.*

The success of this award-winning series has prompted CBS to develop six new program series for the coming season that will again meld the expertise of educational experts with creative producers to bring to children a learning experience, combined with entertainment. Scheduled for Saturday mornings, these series and FAT ALBERT are designed to stimulate youngsters' mental growth and develop judgment and moral values. With the CHILDREN'S FILM FESTIVAL, the CBS Saturday schedule in the 1974-75 season will offer four continuous hours of children's

* The pro-social messages of this popular program are apparently being communicated successfully. A recent study revealed that nine out of ten (89.3%) of the children in the sample received one or more pro-social messages from an episode of FAT ALBERT which they viewed. (The study was conducted with 711 children by the Office of Social Research of the CBS/Broadcast Group in cooperation with the Gene Reilly Group of Darien, Connecticut.)

programming containing pro-social themes, objectives and content which we believe will contribute to the social and intellectual development of young viewers.

b. Advertising clearance
policies and practice

CBS exercises the same high degree of responsibility with respect to commercial matter, as it does in its programming. We believe that the commercial review procedures we take are consistent with our obligation to protect children from objectionable advertising. Moreover, in light of new policies in the area of children's commercials, advertising has significantly changed.

The Program Practices Department of the CBS Television Network, which is headed by a CBS Television Network Vice President, has general responsibility for assuring that all commercial matter submitted for use on the CBS Television Network measures up to acceptable standards.* Reviewing every commercial submitted for broadcast is a staff of six editors, under the supervision of the Director of Commercial Clearance. All food advertisements are currently reviewed by an editor who is a trained nutritionist with a Bachelor of Science degree in Food and Nutrition from Cornell University.

In addition to its regular staff, the Department retains a medical adviser and other specialized consultants (inside and outside CBS) to review advertising claims and new presentations of previously substantiated claims. All product claims, whether made orally or by demonstration, are, of course, required to be substantiated. Even after acceptance for broadcast, commercials are reviewed in light of regulatory agency action, changing NAB Code policy, complaints from the public, inquiries from affiliated stations or other information indicating that further consideration is appropriate.

All commercials broadcast over CBS' facilities must, at a minimum, comply with the Television Code of the National Association of Broadcasters ("NAB") and with its Children's

* Each CBS Owned television station also has continuity acceptance personnel who review commercial acceptability.

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Television Advertising "Statement of Principles."* Today on CBS, commercials directed to children are in strict compliance with the recent "Interpretations of the Statement of Principles," which were promulgated by the NAB Television Code Review Board and became effective on April 1, 1974. CBS' review of toy commercials is not completed unless the final commercial film and a sample toy have been approved by the NAB Code Authority. The same procedure is followed for all children's commercials involving premiums.**

The NAB Statement of principles and the April 1 Interpretations, will, we believe, substantially improve the quality of children's commercials. In some cases, the Guidelines require the inclusion of positive information in the commercial, as well as the elimination of certain techniques. For example, Interpretation #5 requires that commercials for breakfast-type products, such as cereal, "shall include at least one audio reference to and one video depiction of the role of the product within the framework of a balanced regimen."

The Statement of Principles states that creative concepts, techniques and language shall be "non-exploitative in manner, style and tone." The Interpretations specify that this principle means that children's advertisements "shall not direct children to purchase or to ask a parent or other adult to buy the product for them," and that such advertising "shall avoid using exhortative and imperative language...[and] irritating, obtrusive or strident audio techniques or video devices...." Not all observers may agree as to what constitutes an "exploitative" technique -- but CBS personnel charged with the responsibility for making this determination use their best efforts and informed judgments to reject "exploitative" commercials.

* Since January 1, 1974, the effective date of the Statement of Principles, CBS has not broadcast the Cocoa Pebbles commercial described in your letter. This commercial obviously contains advertising that would not be acceptable under today's standards, since it fails adequately to present the cereal in the context of a balanced breakfast.

** Both of the toy commercials in your letter and the premium portion of the cereal ad had been expressly approved by the NAB Code Authority.

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Our discussion of advertising standards and procedures would not be complete without reference to the self-regulatory program instituted by the National Advertising Review Board ("NARB"). On March 14, 1974, the NARB announced plans to strengthen its self-regulatory mechanism by an intensified review program for national advertising addressed to children. The program is being coordinated by a special unit within the National Advertising Division ("NAD") of the Council of Better Business Bureaus, with the NARB functioning in an "appellate court" role. The NAD is to be the "trial court," as well as the investigative arm of the program. A summary of the initial steps taken by the NAD to implement the program was presented at the May 20, 1974 meeting of representatives of the advertising industry, the media and consumer groups, who have been working to develop a voluntary code governing children's advertising in connection with the Federal Trade Commission's Children's Television Advertising Project.

In our view, the standards set by CBS and the procedures followed by its Program Practices personnel are consistent with CBS' public interest responsibilities. Indeed, the Commission has in the recent past had occasion to review the commercial clearance practices of the CBS Television Network and found them reasonable. Significantly, the Commission noted that "it is simply not reasonable to try to make networks or licensees into a kind of mini-FTC." (Letter to Geoffrey Cowan, Esq., Joseph N. Onek, Esq., Center for Law and Social Policy, FCC 71-1098, October 26, 1971.) With the addition of the self-regulation program instituted by the NARB, we believe that the media, the NAB and the advertising industry are exercising an exceptionally high degree of responsibility towards television's young viewers.

c. PSAs and other programming relating
to material in children's advertising

You will find, however, that CBS' responsiveness to consumer interests does not end with advertising surveillance. Both the CBS Television Network and CBS' Owned stations have used varied formats to present information relating to the products and subject matter of children's commercials. Formats include public service announcements, news and other informational programming, as the following examples illustrate.

Within the past few months, the CBS Television Network has broadcast public service announcements dealing with nutrition, physical fitness, toy safety, cigarette smoking, juvenile

diabetes and poison prevention.* The Advertising Council's nutrition spots offer a free booklet entitled, "FOOD IS MORE THAN JUST SOMETHING TO EAT." The President's Council on Physical Fitness and Sports produces messages directed to children that have long been broadcast on children's programming. And spots produced by the Council on Family Health emphasize reading the label on medicine bottles and are directed to all members of the family.**

A regular feature of CAPTAIN KANGAROO from April 1972 through December 1973 consisted of a series of films on health, nutrition and growing up. Prepared by the Office of Child Development, the U.S. Department of Health, Education and Welfare, these films presented constructive messages on physical and emotional development.

CBS' awareness of the importance of presenting nutritional information to youngsters has resulted in the production by the network of a series of four public service announcements, featuring Captain Kangaroo, which are in the final stages of completion. The idea for these nutrition spots originated last July but the development of appropriate scripts and the actual production has been a lengthy and costly process. Four additional public service messages with Captain Kangaroo are also in production at the present time.

In addition, each of the CBS Owned television stations has produced and broadcast public service announcements on nutrition, toy safety and related subjects, which have been exchanged and broadcast by all the CBS Owned stations. Characters from WCBS-TV's PATCHWORK FAMILY participated in two safety spots; WCAU-TV's "Good Stuff Box" PSA advocated health snacks, and KMOX-TV's 30-second spot suggested that children eat fresh fruits rather than sweets; KNXT produced two PSAs on playing safely; and WBBM-TV's PSA was on fire safety.

KMOX-TV, KNXT and WBBM-TV have, in addition, broadcast PSAs for the American Society of Dentistry for Children, counseling youngsters to avoid between-meal snacks and sugary foods.

* It is interesting to note that commercial spots closely resembling nutritional PSAs have been produced by Kellogg's and have been shown on CAPTAIN KANGAROO as well as during prime time.

** Other messages directed to children concern such important subjects as brotherhood, community activities (e.g., Scouts, Y programs), the encouragement of reading, anti-littering, anti-smoking, drug abuse and water safety.

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Within the last year, American Dental Association PSAs designed to foster good dental habits in children have frequently appeared on WCBS-TV, KMOX-TV, WBBM-TV and KNXT. Recent ADA spots advocate "Chomping Good Snacks." Other examples of relevant PSAs include those of the American Dietetic Association (WCAU-TV), the National Safety Council on dangerous toys and on bicycle safety (KMOX-TV), and the American Academy for Pediatrics (WBBM-TV).

CBS News has also regularly presented information relating to products that are advertised to children. For example, the March 5, 1974 CBS MORNING NEWS presented a report by Steve Young on one advertising technique, the use of youngsters "to move all sorts of merchandise." On December 3, 1973, Sally Quinn interviewed Allenna Leonard, now representative to the Public Action Coalition on Toys, for a lengthy discussion on sexism in toys on the CBS MORNING NEWS. On October 12, 1973, the CBS EVENING NEWS carried a news item that the FDA had that day ordered bakers to double the iron content of enriched white bread. On the CBS EVENING NEWS of September 14, 1973, Walter Cronkite reported how a consumer group was trying to pressure General Mills to scrap a test cereal ("Mr. Wonderful Surprise") that it considered "junk food." The CBS EVENING NEWS reported on January 17, 1973 that the Food and Drug Administration had announced new guidelines for food labels relating to nutritional content. FDA requirements were also the subject of a CBS MORNING NEWS item on October 11, 1972. And on the CBS MORNING NEWS of March 14, 1972, Shana Alexander discussed "truth and fiction" about breakfast foods.

IN THE NEWS has also served as a format for conveying consumer information to children. It has particularly served a goal mentioned in your letter -- teaching children "that the advertised products cost money," as illustrated by these recent IN THE NEWS broadcasts: The high cost of electricity in all-electric homes (April 6, 1974); the price of rice, a staple food for over half the world, which has more than tripled in the past year (April 13, 1974); how food cooperatives enable members to eat better for less money; (March 9, 1974); what makes up the cost of living (February 23, 1974); an explanation of the recently lifted ceiling on beef prices (September 15, 1973).

In a variety of contexts, the CBS Owned stations have also provided material in the public interest that would assist children and their parents in making informed judgments about products commonly advertised in children's television commercials. For example, on May 5, 1974, nutritionist Joan Gussow discussed eating between meals and proper diet on TODAY'S HEALTH, a regularly scheduled interview program broadcast on WBBM-TV. DUSTY'S TREE HOUSE, a children's program produced by KNXT, has presented segments on nutrition (e.g., how Granola is made, April 14, 1974;

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the importance of spinach and good foods, June 9, 1973).

KMOX-TV presented nutritionist Carlton Fredericks on NEWS-MAKERS, an interview series, on March 16 (repeated March 17), 1974; Mr. Fredericks discussed the use of preservatives in foods and the lack of nutritional value in highly processed foods such as white flour and white sugar. On March 2, 1974, ST. LOUIS ILLUSTRATED included a segment on preventive dentistry for the young. KMOX-TV's Saturday afternoon children's series GOTCHA! has presented films on proper nutrition (January 14, 1974; October 13, 1973; September 22 and 29, 1973) and a post-film demonstration of how to make a health food milkshake (October 13, 1973).

WCAU-TV has devoted a number of programs in recent months to the subject of nutrition (GENE LONDON, February 3, 1974; EYE ON, January 28, 1974; WAKE UP, October 17, 1973; also segments of BETTY HUGHES, November 1, 1973, June 19, 1973; MORNINGSIDE WITH EDIE, February 12, 13, 15, 1974.) In reply to a WCAU-TV editorial on "Food, Nutrition and Health," Pauline London of the Philadelphia Welfare Rights Organization spoke on "Children's Nutrition" on December 20, 1973. On November 23, 1973, the station's editorial was on Toy Shopping, and a segment of MORNINGSIDE on March 5, 1974, was devoted to dangerous toys. Last summer WBBM-TV broadcast a three-part report on ice cream, in August a report on MacDonald's Quarter Pounder; and on March 5-7, 1974, WBBM-TV broadcast a three-part series on MacDonald's.

New York television viewers are familiar with Correspondent John Stossel, who regularly reports on consumer affairs for WCBS-TV's ELEVEN O'CLOCK REPORT. On December 15, 1973, WCBS-TV scheduled a special half-hour program on toys entitled CHANNEL 2 EYE ON TOYS: WHAT EVERY PARENT SHOULD KNOW. Other examples of recent WCBS-TV broadcasts include the February 2, 1974 broadcast of CHANNEL 2 THE PEOPLE (various aspects of dental hygiene for children, including the prevention of caries) and the March 26, 1974 PAT COLLINS SHOW (obesity in children, mentioning so-called junk foods and their role, ✓
units

CBS has, as these examples illustrate, broadcast information relating to advertised products and methods -- not to counter commercials out of legal obligations of "fairness," but because we believed this information newsworthy or interesting or otherwise appropriate for broadcast in the public interest.

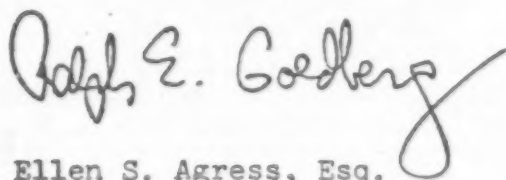
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4. Conclusion

It must be recognized, of course, that television is but one factor in encouraging children to eat certain foods or purchase certain products. A child's own development, combined with information received from many sources, contributes to his tastes, responsiveness and critical faculties. CBS believes that its total program service makes a constructive contribution to the development of our nation's children, by providing entertaining and informative programming to meet the diverse needs and interests of its young audience. We do not believe that by presenting advertisements within that programming, we lessen our contribution or endanger the mental or physical well-being of our young viewers.

As responsible broadcasters, we do not broadcast commercials that we believe are misleading, deceptive or false; but we believe it is reasonable to advertise products to the public, including children, so long as it is done in a responsible manner. We believe that by our commercial clearance practices and by our programming, we have fulfilled and we will continue to fulfill our legal and public interest obligations to our viewers.

Very truly yours,



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